

26 JUL 5

Ref: 95-F-1239

Mr. John G. Gowan
LIBERTAD
PO Box 23067
Albuquerque NM 87192-1067

Dear Mr. Gowan:

This responds to your May 12, 1995, Freedom of Information Act (FOIA) request pertaining to the Defense Equal Opportunity Council Report of the Task Force on Discrimination and Sexual Harassment. Your letter, addressed to the Secretary of the Air Force, was referred to this Directorate for administrative FOIA processing. We received your letter on May 31, 1995. Our June 9, 1995, interim response refers. The Air Force will respond to you regarding the curriculum for which you asked.

The Office of the Under Secretary of Defense for Personnel and Readiness has provided the enclosed records as responsive to the first item you requested. There are no assessable fees in this instance.

Sincerely,

SIGNED

A. H. Passarella
Director
Freedom of Information
and Security Review

Enclosures:
As stated

Prepared by hogan:5F123911:7/25/95:DFOI:X71160:gr✓_pk_y1_wh_

#164



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAY 5 1995



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Report of the DEOC Task Force on Discrimination and Sexual Harassment

I have approved the final report of the DEOC Task Force, including all 48 of the recommendations. The report is attached.

The task force identified two goals and five principles for Military Equal Opportunity programs. They recommend improvements in the Services' discrimination and harassment prevention programs, including the establishment of Department-wide standards for discrimination complaints processing to ensure the fair and prompt resolution of complaints.

The Under Secretary of Defense for Personnel and Readiness will embody the task force's recommendations in the appropriate Department of Defense Directives and Instructions, which will be issued by the Secretary of Defense by May 31, 1995. Secretary Perry and I expect that he will receive your complete support in this task.

Attachment:
As stated

U 34026 195



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Defense Equal Opportunity Council



Report of Task Force on Discrimination and Sexual Harassment

May 1995

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DEOC TASK FORCE
ON
DISCRIMINATION
AND
SEXUAL HARASSMENT

CO-CHAIRS

DR. SHEILA E. WIDNALL
SECRETARY OF THE AIR FORCE

DR. EDWIN DORN
UNDER SECRETARY OF DEFENSE
FOR PERSONNEL AND READINESS

PANEL MEMBERS

MS. DEBORAH R. LEE
ASSISTANT SECRETARY OF DEFENSE
(RESERVE AFFAIRS)

MS. JUDITH MILLER
DOD GENERAL COUNSEL

MR. DEREK J. VANDER SCHAFF
DOD DEPUTY INSPECTOR GENERAL

MS. SARA E. LISTER
ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS)

MR. FREDERICK F. Y. PANG
ASSISTANT SECRETARY OF DEFENSE
(FORCE MANAGEMENT POLICY)

DR. BERNARD ROSTKER
ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)

MS. FLORENCE MADDEN
ASSISTANT GENERAL COUNSEL OF THE AIR
FORCE (MILITARY AFFAIRS)

MS. KATHERINE ARCHULETA
DEPUTY CHIEF OF STAFF
OFFICE OF THE SECRETARY
U. S. DEPARTMENT OF TRANSPORTATION

MR. WALTER SOMERVILLE
CHIEF, OFFICE OF CIVIL RIGHTS
U. S. COAST GUARD
U. S. DEPARTMENT OF TRANSPORTATION

LTC GEN BILLY J. BOLES, USAF
DEPUTY CHIEF OF STAFF (PERSONNEL)

LTC GEN GEORGE R. CHRISTMAS, USMC
DEPUTY CHIEF OF STAFF (MANPOWER AND
RESERVE AFFAIRS)

VADM FRANK BOWMAN, USN
DEPUTY CHIEF OF NAVAL OPERATIONS
(MANPOWER AND PERSONNEL)

MG WALLACE C. ARNOLD, USA
ASSISTANT DEPUTY CHIEF OF STAFF
(PERSONNEL)

RADM PATRICIA A. TRACEY, USN
DIRECTOR FOR MANPOWER AND
PERSONNEL, JOINT STAFF

ACKNOWLEDGMENTS

We wish to extend our sincere appreciation to the following staff members and to the Legal Policy Working Group for their professional advice and dedicated assistance.

Coordinating Staff

Mr. William E. Leftwich, III Deputy Assistant Secretary of Defense for Equal Opportunity	Mr. James E. Love, OSD Ms. Adrienne Goins, OSD Ms. Lori Hendricks, OSD
Mr. Claiborne D. Haughton Jr., Principal Director, Office of the Deputy Assistant Secretary of Defense for Equal Opportunity	Lieutenant Colonel John Andrew, USAF Staff Sergeant Teresa Ollison, USAF Senior Airman Bobbie L. Garrett, USAF Senior Airman Youlanda L. Grant, USAF
Colonel John D. Cox, USAF Colonel Hubert Bridges, USA Mr. Jerry Anderson, OSD	Ms. Mary Williams, OSD Ms. Carlita T. Telsee, OSD

Legal Policy Working Group

Co-Chair - Ms. Florence Madden, Assistant General Counsel of the Air Force
Co-Chair - Mr. Paul Koffsky, Deputy General Counsel (Personnel and Health Policy), Office of the Secretary of Defense

Colonel James Smyser, USA Lieutenant Colonel Stephanie Willson, USA Ms. Susan McNeill, OSD Mr. Barry Kean, USAF Captain Gerald Kirkpatrick, USN Colonel Jack L. Rives, USAF	Colonel Jarissee Sanborn, USAF Lieutenant Colonel Rick Rosen, USA Commander Bill Miller, USN Major James Reistrup, USMC Lieutenant Colonel Stephanie Spahn, USA
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EXECUTIVE SUMMARY

Equal opportunity is a military necessity. It provides the All-Volunteer Force access to the widest possible pool of qualified men and women, it allows the military to train and assign people according to the needs of the Service, and it guarantees Service men and women that they will be judged by their performance and will be protected from discrimination and harassment.

This report was requested by the Secretary and Deputy Secretary of Defense. Each had made clear his personal commitment to equal opportunity, and both had expressed concern about allegations that several recent complaints of discrimination and harassment had been handled inadequately or insensitively. They asked the Secretary of the Air Force and the Under Secretary of Defense for Personnel and Readiness to co-chair a task force that would:

- review the Military Services' discrimination complaints systems, and
- recommend Department-wide standards for discrimination complaints processing, where necessary, to ensure the fair and prompt resolution of complaints.

This report recommends 48 improvements in the way the Armed Services deal with discrimination and harassment. Separate chapters address the specific circumstances of the Reserve Components and joint organizations, including the Office of the Secretary of Defense.

Goals for an Effective Equal Opportunity System

The military is not just another employer, and military service is not just another job. The Armed Forces were established to defend the nation against foreign enemies. Every soldier, Sailor, airman and Marine is taught that his or her individual needs will be subordinated to that essential responsibility. Military service requires a high level of professional skill, a 24-hour-a-day commitment, a willingness to give the last full measure of devotion. It is an uncommon profession that calls for people of uncommon dedication.

A Service member's first obligation is to fulfill his or her assigned military mission. Missions, however, are not assigned to individuals but to units, and the success of missions depends in large measure on the degree of trust and understanding that exists among people in units. Military personnel often find themselves in situations where a moment's hesitation -- a second of doubt about another member of the team -- can mean disaster.

This recognition of the special character of the military and of military service leads us to posit two goals for the equal opportunity program of the Department of Defense:

Unit Effectiveness In order to execute their responsibilities, the men and women of the Military Services must function as a team, unified by special bonds of trust, mutual respect, loyalty, and sacrifice. Shared values and shared risks, positive identification with the military institution, and

subordination of self characterize the military culture and distinguish it from other large institutions. Commanders are responsible for creating and sustaining effective units. To do so, they must eliminate discrimination and harassment because these offenses undercut the special qualities that are essential to unit effectiveness.

Individual Opportunity and Fairness Individual members of the Military Services must have the opportunity to excel in an environment free from discrimination and harassment. The Human Goals charter of the Department of Defense states: "Our nation was founded on the principle that the individual has infinite dignity and worth. The Department of Defense . . . must always be guided by this principle."ⁱⁱ Our Equal Opportunity programs, including our discrimination complaints processing systems, must be based on a goal of individual opportunity in order to uphold the principles upon which this country was founded -- the principles which our military is charged to defend.

Principles for an Effective Equal Opportunity System

We identified five principles that military Equal Opportunity (EO) programs should follow in order to fulfill those twin goals.

Command Commitment and Accountability Commanders' demonstrated leadership and personal commitment to equal opportunity must be visible and unequivocal. Further, commanders are expected to communicate standards of professional conduct and build an organizational culture where members are valued, respected, and treated fairly. The most effective way of ensuring accountability in military organizations is to give commanders the direct responsibility for managing the discrimination complaints system.

Service Distinctiveness The Defense Department must establish goals and standards. However, since the Services differ in mission and organization, Equal Opportunity programs in the individual Military Services will be effective only if they are incorporated into Service professional military education programs, investigatory structures and procedures, disciplinary structures, and command responsibilities.

Clarity of Policy Clear and concise written policies are necessary to ensure that military personnel know that discrimination and harassment are forbidden, how to recognize these offenses, how to file complaints, how to prevent reprisal, and that the rights of all involved will be protected.

Effective Training Equal opportunity and human relations training should be incorporated into career development education for all personnel throughout their careers. In addition, persons involved in complaints handling should be given specialized training. Training for leaders and commanders should stress their personal involvement and accountability in the management of EO programs.

Prompt, Thorough and Fair Complaints Handling Discrimination complaints systems should provide for prompt resolution at the lowest appropriate level and be designed to prevent reprisals. In addition, support services should be made available to complainants and respondents as part of the complaints handling process. Finally, each proven offender should receive an appropriate sanction for the offense.

An Overview of Major Findings and Recommendations

This report contains 48 recommendations for improving the Services' Equal Opportunity programs and discrimination complaints processing systems. Some of the recommended changes take the form of Department-wide standards for discrimination complaints processing. But while general principles and standards can often be shared across Service lines, the simple substitution of one Service's complaints processing system for another's is both undesirable and unworkable. Likewise, the imposition of one "ideal" system on the Services is unrealistic. There is no ideal system. The Military Services and their Reserve components are responsible for incorporating our recommended standards into their existing equal opportunity systems.

We found that leadership commitment is the key to effective Equal Opportunity programs and discrimination complaints processing systems. Without the unequivocal support of commanders at all levels, our recommendations will have little impact.

- **The Services should hold senior officials accountable for equal opportunity by considering their issuance of policy guidance, creation of an organizational climate which fosters mutual respect, evaluation of EO in performance reports, and monitoring and reporting to ensure EO systems work.**

The Services vary widely in the ways they handle discrimination complaints. For instance, they use different timelines for processing formal complaints. The grades and lengths of assignments of equal opportunity personnel also vary.

- **While maintaining Service-specific systems, the Military Departments should execute the recommendations contained in this report, provide to the Under Secretary of Defense for Personnel and Readiness plans for implementation, and report at designated intervals on their progress.**

Department of Defense policy is clear about proscribing discrimination and sexual harassment. However, definitions of key terms, standards of proof, and timelines for complaint processing vary among the Services or are not stipulated. In addition, standards and definitions are subject to change.

- **The Office of the Secretary of Defense (OSD) should clarify the definitions of key terms found in DoD Directive 1350.2. DoD Components should review all appropriate implementing documents and revise their definitions of key terms as necessary to conform with the DoD definitions.**

Each of the Services has established an equal opportunity and human relations education and training program that is conducted at entry points. Education for DoD senior leaders should stress their leadership responsibilities and provide information on the legal and organizational frameworks within which they operate.

- **Each Service and Reserve component should specify criteria for the qualifications and grades of personnel serving in EO billets. The Defense Equal Opportunity Management Institute (DEOMI) should continue to specify standards and develop training for personnel serving in EO billets.**
- **DoD policy should require training for all commanders and civilian managers on their roles and responsibilities for EO programs, including discrimination complaint processing systems, reprisal detection and prevention, monitoring of subordinate EO climates, and managing civilian Equal Employment Opportunity (EEO) systems. Professional military education for both officers and non-commissioned officers should stress leaders' responsibility for effective Equal Opportunity programs.**

The principle of prompt, thorough and fair complaints handling ensures fair investigations, provides for resolution at the lowest appropriate level, prevents reprisals, and ensures the prompt resolution of complaints. We offer recommendations on various aspects of complaints handling: identifying discrimination and sexual harassment, characteristics of informal and formal complaint processes, where to file a complaint, the complaint form, protection from reprisal, the conduct of investigations, timelines for investigations, fair and adequate investigations, legal sufficiency, consistent sanctions, feedback and follow-up, confidentiality of records and documentation, appeals, and support services.

- **Each Service should ensure that the chain of command remains an integral part of the processing and resolution of all complaints of discrimination and sexual harassment.**
- **Each Service and Reserve component should establish toll-free or local helplines that provide information on behavior that constitutes discrimination and sexual harassment, how and where to file a complaint.**
- **The Services should establish integrated and comprehensive complaint resolution systems for both informal and formal complaints and provide a central point of contact at the installation level, staffed with qualified and trained EO counselors.**
- **The Services' discrimination complaint processing systems should contain specific reprisal prevention procedures and include guidance for commanders regarding the relocation or reassignment of complainants.**
- **The Services should adopt standards for conducting complaint investigations which draw upon criteria used by the DoD Inspector General.**

- DoD should require that all formal discrimination complaint cases are reviewed for legal sufficiency before final action is taken and before the complaint is closed.
- The Services should ensure timely and periodic feedback to complainants and respondents regarding the status and outcome of complaints and should document formal complainants' satisfaction with the complaint process.
- DoD should establish criteria for the appeal by complainants and respondents of formal discrimination and sexual harassment complaints. Final appeal procedures should be established within each Service at the level of the Service Secretary.
- The Services should ensure that programs for counseling, information, referral, and other assistance are made available to Service members who have experienced discrimination or sexual harassment.

The Reserve components are similar to, yet distinct from, their active-duty counterparts. We noted some obvious and some not-so-obvious differences between the active duty and Reserve settings that can affect the nature and effectiveness of sexual harassment and discrimination programs. For instance, violations of standards and instances of reprisal may occur across a combination of military and civilian statuses. Most members of the National Guard and Reserve are in a military status on a part-time basis. Some serve in a full-time status in support of the training, administration and readiness of the National Guard and Reserve. We concluded that a "Full-time values -- part-time careers" perspective is required. Off-duty or non-duty behavior that impacts on the military workplace must be covered by discrimination and sexual harassment prevention programs in the National Guard and Reserve.

- In the case of members of the National Guard and Reserve who are not serving in a full-time duty status, off-duty or non-duty behavior that affects the military workplace must be covered by discrimination and sexual harassment prevention programs in the National Guard and Reserve.

Leaders of joint or multi-Service organizations are responsible for creating and sustaining environments free from discrimination and harassment, where individual Service members have the opportunity to excel. The same principles and standards required for effective EO complaint systems within the Military Services are applicable to EO complaint systems in joint commands and task forces, the Office of the Secretary of Defense, Defense Agencies and field activities.

- Commanders of joint organizations and directors of Defense Agencies should establish discrimination and sexual harassment complaint procedures.
- Commanders of joint organizations and directors of Defense Agencies should take corrective actions and issue administrative sanctions, if appropriate, in all cases of substantiated complaints within their organizations.

An equal opportunity system that supports unit effectiveness and ensures fairness to individuals will enhance military readiness. Further, these twin goals will be fulfilled by complaints handling systems which uphold the principles we have identified: command commitment and accountability, Service distinctiveness, clarity of policy, effective training, and prompt, thorough and fair complaints handling. The recommendations summarized above are based on these principles.

ⁱ According to DoD Directive 1350.2, illegal discrimination includes harassment based on race, sex, national origin, color, or religion.

ⁱⁱ See Charter at Appendix 3.

A. INTRODUCTION

The national security of the United States relies on well trained, equipped and ready combat forces. The Military Services place enormous demands on their people. Military personnel may be exposed to danger, personal hardships, and the deprivation of individual freedoms. In order to execute their responsibilities, the men and women of the Military Services must function as a team, united by special bonds of trust, mutual respect, loyalty and shared sacrifice.¹ Military culture is characterized by shared values and shared risks, identification with the military institution, and subordination of self. These qualities distinguish the military from other large organizations and form the context within which military equal opportunity policy and program recommendations must be understood.

Discrimination and sexual harassment jeopardize combat readiness by weakening interpersonal bonds, fomenting distrust, eroding unit cohesion, and threatening good order and discipline. An organizational climate poisoned by bias sets member against member and undermines institutional allegiance. Readiness is supported by comprehensive and reliable systems for addressing human relations issues and for investigating and resolving discrimination complaints. Such systems provide a visible symbol of organizational commitment to equality and fair treatment, education and training, counseling support, and assistance to complainants when equal opportunity violations occur.

Department of Defense (DoD) policy clearly proscribes discrimination and sexual harassment.² The DoD strives to ensure it is an organization where every individual is able to contribute to his or her fullest potential in an atmosphere of respect and dignity.³ Furthermore, the Department, of necessity, is building a force which reflects the diversity of our nation.

The composition of the U.S. military is a statement about what is possible in a multi-racial, multi-ethnic society. Most nations are multi-racial, and many nations are riven along lines of race, religion, or language. When the U.S. military is deployed, whether for warfighting or peacekeeping, it displays the possibility of overcoming those sources of division. It shows that diversity can be a source of strength.

This report assesses policies and procedures for dealing with charges of discrimination and harassment within the Military Services. The report was called for by the Secretary and Deputy Secretary of Defense. Each had made clear his personal commitment to equal opportunity, and both had expressed concern about allegations that several recent cases of discrimination and harassment had been handled incompetently or insensitively.⁴

The Secretary and Deputy Secretary asked the Secretary of the Air Force and the Under Secretary of Defense for Personnel and Readiness to co-chair a task force that would:

¹ See thoughts expressed by West Point cadets in Chris Black, "At West Point, charge unites the sexes," *Boston Globe*, November 3, 1994, p. 3. One commented: "We could die with these people. We have to trust these people. We have to meet a higher standard."

² See Appendix 1 and DoD Directive 1350.2 (in Volume II of this report).

³ See Appendix 3.

⁴ See Secretary of Defense memorandum, "Equal Opportunity (EO)," March 3, 1994 (Appendix 1); and Deputy Secretary of Defense memorandum, "Sexual Harassment Policy Plan," March 15, 1994.

- review the Military Services' discrimination complaints systems, and
- recommend Department-wide standards for discrimination complaints processing, where necessary, to ensure the fair and prompt resolution of complaints.⁵

The discrimination complaint processing systems currently used by the Military Services work well most of the time. The chain of command is effective in administering these systems; however, evidence of mishandling indicates that systemic improvements are warranted.⁶

Task Force Process

We held a total of more than 20 formal meetings from May 13, 1994, through April 28, 1995, and received briefings from representatives of the Military Departments, including their Reserve components. We heard from subject matter experts and several advocacy groups. We reviewed dozens of documents, policy papers, and studies. This report, the collective effort of senior civilian and military leaders of the Department of Defense, demonstrates our strong commitment to equal opportunity and fair treatment for all members of the Military Services.

The work of our Task Force took place in a time of intensive scrutiny and change within the Military Services with respect to the understanding and handling of the issues of harassment and discrimination. During the course of our work, the Services instituted a significant number of changes in policy and procedure. As a result, many of our recommendations have already been adopted.

Military discrimination and sexual harassment prevention programs evolve to keep pace with changes in public law, DoD and Service policies. In 1994, large efforts were already under way by the Army, Navy, Marine Corps, and Air Force to improve their complaint processing procedures. The Coast Guard centralized the processing of all formal military complaints of discrimination and sexual harassment at the Department of Transportation level for enhanced effectiveness. In fact, significant improvements to complaint processing procedures and programs occurred while we met. A detailed description of current military discrimination and sexual harassment prevention programs is at Appendix 4. Several significant improvements are worth noting here:

- The Army issued guidance to codify procedures for following up with complainants and to require commanders to develop plans to prevent reprisal. A follow-up assessment will be conducted on all formal discrimination and sexual harassment complaints. The purpose of the assessment is to measure the effectiveness of actions taken to detect and

⁵ See Secretary of the Air Force and Under Secretary of Defense (Personnel and Readiness) joint memorandum for the Deputy Secretary of Defense, "Sexual Harassment Policy Plan," April 25, 1994 (Appendix 2).

⁶ See Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations of Allegations of Discrimination by Military Personnel* (Washington, D.C.: Department of Defense Inspector General, March 1994), pp. 2-3 (Appendix 10). Fourteen percent of the cases reviewed were found to be inadequately investigated. See also U. S. Congress, House of Representatives, Committee on Armed Services, *Sexual Harassment of Military Women and Improving the Military Complaint System*, hearing held March 9, 1994, report H.A.S.C. No. 103-44, 103d Congress, 2nd session (Washington: U.S. Government Printing Office, 1994).

deter reprisal. The equal opportunity advisor presents the results of the assessment to the commander for appropriate action.

- The Navy distributed fleet-wide a booklet titled "Resolving Conflict." The booklet provides guidelines for identifying levels of sexual harassment behavior and steps for resolving conflict informally. The Navy also implemented timelines for processing sexual harassment complaints; required sexual harassment training for flag officers, command master chiefs, commanding officers, and executive officers; and developed a complaint form to be used as an alternative to Article 138 procedures for discrimination and sexual harassment complaints. The complaint form includes procedures for preventing reprisal, follow-up and feedback timelines, and procedures for appeal or review of the complaint following command action.
- The Marine Corps increased the number of equal opportunity advisors assigned to major installations from 16 to 22. The additional six EO advisors attended the full 16-week resident training program conducted by the Defense Equal Opportunity Management Institute (DEOMI). Current guidance requires all new EO advisors to attend the 16-week DEOMI resident course. In addition, the Marine Corps strengthened its complaint processing procedures by instituting timelines for filing complaints, acting on complaints, and resolving complaints. The Marine Corps also established a requirement that complaint handlers request waivers for failing to meet the timelines.
- Recently, the Air Force added 86 positions to its base-level equal opportunity staffs and mandated an additional four hours of human relations education for the entire force. The Air Force improved its complaints processing procedures by tightening timelines for complaint resolution, follow-up and feedback to complainants. The Air Force now requires senior installation commanders to review all closed cases to ensure that subordinate commanders have taken appropriate actions. A new Air Force pamphlet, *Discrimination and Sexual Harassment*, describes each member's roles and responsibilities.

Our report is presented in two volumes. Volume I consists of the report and its associated appendices. The report contains recommendations intended to strengthen and modernize the Services' discrimination complaint procedures. Volume II contains a variety of background papers, including summaries of all of the briefings, a bibliography, and other background documents.

Background

The Military Services have made substantial progress in addressing equal opportunity issues -- first with the full integration of African Americans and more recently with enhanced career opportunities for women.⁷ Nevertheless, the Military Services have experienced increases

⁷ See "Secretary of Defense Perry Approves Plans to Open New Jobs for Women in the Military," Department of Defense News Release No. 449-94, Office of Assistant Secretary of Defense (Public Affairs), Washington, D.C., July 29, 1994; John F. Harris, "Army Opens 30,000 Jobs to Women," *Washington Post*, July 27, 1994, p. A5; and

in reported incidents of discrimination and sexual harassment. The number of military equal opportunity complaints began a steady climb in 1987, reaching a high of 2,103 by 1992. These increases, which may represent a greater awareness of prohibited behavior and an increased willingness to trust the complaints processing system, have been cause for concern within the Services.

The U.S. Armed Forces are not immune to social forces that affect our larger society. Racial and ethnic unrest, changing workplace demographics, economic insecurity, and class differences spill over to create tension within the Armed Services. In view of these social trends and a continued rise in reported equal opportunity complaints, Members of Congress and senior DoD leaders became increasingly concerned about the equal opportunity climate within the Services. In fact, the House and Senate Armed Services Committees required that this report be forwarded to Congress and that the approved recommendations be included in DoD and Service regulations.⁸

Throughout our nation's history, America has turned to its black citizens for manpower during military emergencies. However, it took Executive Order 9981, issued in 1948 by President Truman, and the military manpower requirements of the Korean War, to bring about the elimination of racially segregated military units. In response to racial unrest of the late 1960s and early 1970s, the Military Services instituted groundbreaking race relations education programs and procedures for redressing racial grievances.⁹

In the 1970s the Department developed policies and programs to expand the roles of women in the military. In the mid-1970s, women were admitted to the Service Academies and were allowed to hold noncombat occupations; they were no longer segregated in separate women's corps. Finally, the quota placed on women was removed. In the early 1980s, the Department issued its first policy on sexual harassment and the Services implemented sexual harassment prevention education programs.¹⁰

Prior to 1980, military affirmative action plan steps were linked to the Services' budgets. That is, each affirmative action plan step was developed with budget implications and the required funding. This ensured that affirmative action plans were not just paper programs and that assessment reports were driven by financial audit as well as programmatic audit.¹¹ By the late 1980s, the budget linkage had been abandoned. Thus, today there are no DoD-wide, formal budget requirements with respect to staffing or conducting EO programs.

The Office of the Deputy Assistant Secretary of Defense for Equal Opportunity (ODASD[EO]) suffered staff reductions in the period 1980-1985, losing all but one of its military equal opportunity staff allocations. Reflecting the vicissitudes in high-level support for

Les Aspin and Edwin Dorn, "New Ground Combat Rules for Women," news briefing, January 13, 1994, *Defense Issues*, vol. 9, no. 1.

⁸ U.S. Congress, House of Representatives, *National Defense Authorization Act for Fiscal Year 1995: Conference Report to Accompany S. 2182* (Washington, D.C.: U.S. Government Printing Office, 1994), pp. 99-100.

⁹ The Defense Race Relations Institute, which became the Defense Equal Opportunity Management Institute in 1979, was established in 1971 by DoD Directive 1322.11.

¹⁰ See chronology in Volume II.

¹¹ See Janice T. Adleman and Carleton D. Larkin, *Functional Assessment of Military Equal Opportunity Staffs: Policy and Personnel Analysis*, Vol. II (Vienna, VA: Logical Technical Services Corporation, June 1980), p. 13.

equal opportunity, this office was reduced from 21 to four staff members in the period 1970 to 1986. In 1986 the office was abolished, and its functions were divided among other offices. With this action, the Department of Defense lost its EO focal point. In the late 1970s, the Army abolished its full-time equal opportunity Military Occupational Specialty (MOS) and stopped assigning officers to installation EO offices.¹²

The Office of the Secretary of Defense stopped intensive monitoring of the Services' Equal Opportunity programs through the budgetary and annual military equal opportunity assessment reporting process, and limited its feedback to the Services to informal staff contacts. As an alternative to an ODASD(EO), the Defense Equal Opportunity Council (DEOC) was established to review Equal Opportunity programs in 1986, but its operating method, which featured periodic meetings at the Service Assistant Secretary level, did not provide for high-profile pursuit of EO goals.

In 1988, the Department of Defense conducted a survey of military personnel in all Services on the subject of sexual harassment. Sixty-four percent of all women surveyed and 17 percent of all men reported that they had personally experienced sexual harassment in the year prior to the survey. Based upon these events, the Secretary of Defense decided to strengthen the Department's sexual harassment policy. In July 1991, then-Secretary of Defense Dick Cheney issued a memorandum outlining a seven-point action program designed to eradicate sexual harassment.

The policy message, however, did not appear to get through to everyone. The Tailhook Association's 35th annual symposium, held September 5-7, 1991, resulted in many allegations of sexual harassment and sexual assault and focused public and Congressional attention on these problems.¹³ It was clear that there was still a wide gap between policy set in Washington and the attitudes and behaviors of individuals and small groups in the field.

The witnesses who testified before the House Armed Services Committee on sexual harassment in the military in March 1994 called attention to the fact that problems persist. Testifying at those hearings, then-Assistant Secretary of Defense (Personnel and Readiness) Edwin Dorn explained:

The military services have averaged more than 1,500 sexual harassment complaints annually during the past couple of years. Most of them, about 800 a year in 1992 and 1993, have been substantiated. . . . It is likely that for every reported incident, several others go unreported.

Do these numbers suggest a pervasive problem? Frankly, I do not know. On the one hand, only a small proportion of the 200,000 women on active duty have registered formal complaints. On the other hand, survey data suggest that a very high percentage of military women have experienced sexual harassment.

¹² The Navy and Marine Corps never established EO career specialties. The Air Force has a career field for "Social Actions" personnel; Social Actions is a program which includes equal opportunity, drug and alcohol abuse.

¹³ The Tailhook incident also demonstrated how people can confuse "sexual harassment" with "sexual assault." The former is an administrative offense, the latter, criminal.

What I can say with certainty is this: Sexual harassment is repugnant, it is illegal, and it undermines military effectiveness.¹⁴

On the racial front, the Department eliminated segregated, all-black units in the late 1940s and early 1950s. In the mid-1950s and early 1960s, the Department searched for desegregated schools for the dependents of its Service members and fought to end discrimination in the rental of off-base housing to military personnel. In the mid-1960s the Department increased the accession rate of black officers; and in the late 1960s it fought against outbreaks of racial violence by establishing education programs and improving promotion opportunities for minorities. By the 1980s, many people thought that racial problems had been eliminated: Efforts were relaxed and emphasis on Equal Opportunity programs was diminished.

But discrimination against black military personnel has not gone away. In 1991, Arthur Fletcher, then-Chairman of the U.S. Commission on Civil Rights, visited several U.S. military bases in Europe and concluded that the military was "rife" with racism; he said that he had brought back hundreds of complaints indicating problems in the system of promotions, administration of justice under the Uniform Code of Military Justice (UCMJ), and in the disproportionate impact of the drawdown on black military personnel.¹⁵ He also raised concerns about the DoD overseas school system and DoD civilian employees working overseas. In 1993, Mr. Fletcher visited U.S. military bases in the Pacific and stated that he found problems similar to those in Europe.¹⁶

Also in 1992, the National Association for the Advancement of Colored People (NAACP) sent an investigatory team to Europe to follow up on the 1991 Fletcher trip and a 1971 NAACP report on discrimination in the military.¹⁷ The group's report was released in 1994. It found, among other things, that the personality and disposition of the commander determines how objectively and fairly the discrimination complaint process is administered, as well as the nature of any corrective action; that fear of reprisal caused many military members to file their complaints with civil rights organizations, the Congress, or the President rather than use the military discrimination complaint process; that military EO personnel were ineffective because local commanders write their efficiency reports; and that the primary purpose of the Inspector General system was to prevent embarrassment to military commanders.¹⁸

Therefore, problems persist. Part of the challenge in dealing with them is to isolate the aberrant behavior of individuals from true systemic deficiencies -- and to resolve each appropriately.

¹⁴ Edwin Dorn, "Sexual Harassment: Illegal, Repugnant, Undermining," prepared statement to the House Armed Services Committee, March 9, 1994, *Defense Issues*, vol. 9, no. 17.

¹⁵ See William Matthews, "Report Says U.S. Military is Rife with Discrimination," *Air Force Times*, September 23, 1991.

¹⁶ See Arthur A. Fletcher, "Results of Factfinding From European Trip: A Preliminary Report," National Association for the Advancement of Colored People (NAACP), European Conference of Branches, August 1991; and Rick Rogers, "Fletcher: Racism Prevalent in Military," *Pacific Stars and Stripes*, March 13, 1993, p. 6.

¹⁷ See NAACP, *The Search for Military Justice: Report of an Inquiry into the Problems of the Negro Serviceman in West Germany* (New York: NAACP Special Contribution Fund, April 1971).

¹⁸ See National Association for the Advancement of Colored People (NAACP), *Continuing the Search for Military Justice: NAACP's Report on Discrimination in the Military and Defense School System in Germany* (Baltimore, MD: January 1994).

The recommendations in this report pertain to the receipt and processing of discrimination complaints filed by members of the Armed Forces. Although we did not examine the Department's civilian discrimination complaint processing system, we recognize that uniformed and civilian personnel work together and share a common interest in the quality of the work environment. Typically, civilians who believe that they have been discriminated against or sexually harassed receive counseling and file complaints in accordance with a system established and monitored by the Equal Employment Opportunity Commission (EEOC). This applies whether the alleged discriminating official is a civilian or a member of a military Service. Service members who allege discrimination by civilians file discrimination complaints through the military complaint process of their individual Services.

Goals for an Effective Equal Opportunity System

The military is not just another employer, and military service is not just another job. The Armed Forces were established, uniquely, to carry out one of the few roles explicitly reserved to the Federal Government -- that of defending the nation against foreign enemies. Every soldier, Sailor, airman and Marine is taught, from the first day of entry into service, that his or her individual needs will be subordinated to that essential role. Further, every entrant is taught that military service requires a high level of professional skill, a 24-hour-a-day commitment, a willingness to make personal sacrifices and perhaps to give the last full measure of devotion.

Thus, military service is an uncommon profession that calls for people of uncommon dedication. A Service member's first obligation is to fulfill his or her assigned military mission. Missions, however, are not assigned to individuals but to units, and the success of missions depends in large measure on the degree of trust and understanding that exists among people in the units. Military personnel often find themselves in situations where a moment's hesitation -- a second of doubt about another member of the team -- can mean disaster.

This recognition of the special character of the military and of military service led us to identify two overarching goals for the equal opportunity program of the Department of Defense:

- **Unit Effectiveness** In order to execute their responsibilities, the men and women of the Military Services must function as a team, unified by special bonds of trust, mutual respect, loyalty, and shared sacrifice. Shared values and shared risks, identification with the military institution, and subordination of self characterize the military culture and distinguish it from other large institutions. Commanders are responsible for creating and sustaining effective units. To do so, they must eliminate discrimination and harassment because these offenses undercut the special qualities that are essential to unit effectiveness.
- **Individual Opportunity and Fairness** Individual members of the Military Services must have the opportunity to excel in an environment free from discrimination and harassment. The Human Goals charter of the Department of Defense states: "Our nation was founded on the principle that the individual has infinite dignity and worth.

The Department of Defense . . . must always be guided by this principle."¹⁹ Our Equal Opportunity programs, including our discrimination complaint processing systems, must be based on a goal of individual opportunity in order to uphold the principles upon which this country was founded -- the principles which our military is charged to defend.

Equal Opportunity programs which ensure unit effectiveness and individual opportunity enhance military readiness. These goals should be outlined in DoD and Service policy directives and should form the basis for effective Equal Opportunity programs and discrimination complaint processes.

Principles for an Effective Equal Opportunity System

We identified five principles which should underlie the workings of successful Equal Opportunity programs for the Military Services in order to fulfill these goals. Our recommendations are consistent with each of these essential principles.

(1) **Command Commitment and Accountability** One distinctive feature of military life is the ubiquitous nature of command accountability. The commander is held responsible for *everything* the unit does or fails to do, and for the welfare of every Service member and family member. The commander is not just the head of a mission-driven organization; he or she also is the head of a community. The commander is held accountable for the performance of the unit and also for the climate within the unit. One example may clarify the difference between accountability in the military and accountability in most civilian environments: When a civilian is seriously injured off the job, his or her supervisor eventually would be notified and might visit the hospital; in contrast, when a soldier is injured "off the job," the commander is one of the first people notified -- even before the family -- and is expected to take appropriate action to ensure that the soldier and the family are attended to properly.

Obviously, a commander cannot be everywhere and cannot personally oversee everything. Instead, commanders delegate specific tasks to subordinates or specialists. Often, commanders retain immediate, personal responsibility for those things for which they will be personally rated or which they know to be important to their own commanders. Service members pay close attention to which programs commanders take personal interest in, and those which commanders delegate -- and, in a sense, relegate -- to staff. These choices are Service members' clues about commanders' priorities.

Commanders' demonstrated leadership and commitment to equal opportunity must be visible and unequivocal. Further, commanders are expected to communicate standards of professional conduct and build an organizational culture where members are valued, respected, and treated fairly. Military leaders are entrusted with primary responsibility for the welfare of the people under their command. Leaders are responsible for establishing the organizational climate in which everyone is treated with dignity and respect, providing an environment in which individual members can excel, ensuring fair treatment, and demonstrating commitment to shared

¹⁹ See Charter at Appendix 3.

core values. Leaders must be actively involved in Equal Opportunity programs, regularly monitor the command climate, take responsibility for the climate within their command, and review the adequacy of complaint investigations. When violations are substantiated, leaders must take prompt and appropriate actions to enforce the Department's and the Services' policies.

Commanders must be able to take necessary actions and make appropriate decisions on personnel matters without undue concern about the personal consequences of possible EO complaints. This requires an effective complaint handling system in which all have a high degree of confidence. On the other hand, they will be held accountable for their actions and for the actions of those they command both for incidents that occur as well as any charges of reprisal.

The most effective way of ensuring accountability in military organizations is to give commanders the direct responsibility for managing the discrimination complaints system and hold them accountable for their actions. In fact, we believe that it is imperative that we make the chain of command work *for* Service members and *against* discrimination and sexual harassment in the U.S. Armed Forces.²⁰

Clearly, the active and vigorous support of leaders at all levels is the foundation for a positive unit climate and an effective equal opportunity program. The Secretary of Defense, as the senior leader in the Department of Defense, is responsible for establishing overall EO standards and for overseeing the implementation of those standards. The U.S. Congress also plays an important oversight role with respect to EO and other human relations programs in the Services.

(2) **Service Distinctiveness** The Secretary of Defense must establish certain goals, principles and standards of performance. However, the Military Services differ in their missions, command structures, operating conditions, and traditions. These differences are reflected in all of their programs, including their discrimination complaint processes. Any changes made to those processes will be effective only if they are incorporated into existing Service training programs, investigatory procedures, disciplinary structures, and command responsibilities. One of the critical judgments we made involved deciding when to impose Department-wide standards and when to allow for Service distinctiveness. While general principles and standards can often be shared across Service lines, the simple substitution of one Service's complaints process for another's is both undesirable and unworkable.

(3) **Clarity of Policy** Clear and concise written policies are necessary to ensure that military personnel know that discrimination and harassment are forbidden, how to recognize these offenses, how to file complaints, and how the rights of all involved will be protected. Discrimination and sexual harassment complaint procedures should ensure fair treatment of all

²⁰ The Defense Advisory Committee on Women in the Services (DACOWITS), in a recent trip report, argues: "The installations where women have the most confidence in the system regarding sexual harassment complaints are those where the command has taken a strong stand, the rules are clear and programs are in place so that there is feedback on the status of a complaint -- the investigation, the resolution, the disciplinary action taken once a complaint has been resolved." DACOWITS, "Overseas Trip Report: July 9-23, 1994," p. 3.

members of the organization. Service members should have unrestricted access to complaint channels. There must be specific, written policies that define discrimination and sexual harassment and give examples of offensive behaviors. When violations are alleged, policies and procedures should ensure fair treatment for all parties. Policies must specifically proscribe reprisal against complainants, establish and monitor grievance systems, and disseminate information on victim support programs and resources. Each commander should ensure that complaint procedures are clear.

(4) **Effective Training** Each year, 200,000 young men and women join the active force. Every year, roughly one third of the 1.5 million people on active duty change jobs. Given the dynamic nature and high mobility of the DoD workforce, education and training are essential to ensure that equal opportunity policies and procedures are clear to all. Training should also strive for long-term culture change by focusing on values, support networks, teamwork, fairness and responsibility. Professional military education for both officers and non-commissioned officers should stress their leadership responsibilities as well as provide information on the legal and organizational framework within which they operate.

Equal opportunity and human relations training should be incorporated into career development education for all personnel throughout the career life cycle. In addition, persons involved in complaints handling should be given specialized training. Further, training for leaders and commanders should stress personal involvement and accountability.

(5) **Prompt, Thorough and Fair Complaints Handling** Discrimination complaint systems should be designed to ensure the prompt and thorough resolution of complaints, to protect the rights of all involved, to provide for resolution at the lowest appropriate level, and to prevent reprisals.

Leaders must adequately safeguard against reprisal and ensure that allegations are promptly, thoroughly and fairly investigated. Complaint systems should provide options for both formal and informal resolution of allegations based on the seriousness of an incident and the wishes of the complainant. Formal complaint procedures should adhere to standards that ensure complaints are investigated promptly by personnel sufficiently trained to accomplish thorough, impartial inquiries. Procedures must ensure that complainants and respondents are kept fully informed about the progress in resolving their complaint through regular feedback and that there is follow-up with the complainant to detect and deter reprisal.

In addition, support services should be available to complainants and respondents as part of the complaint handling process. We must also develop support systems which act towards making victims of discrimination or harassment "whole." Finally, each offender should receive an appropriate sanction for the offense.

B. FINDINGS AND RECOMMENDATIONS

Over the course of several months -- in a series of more than 20 meetings -- we heard briefings from representatives of the Military Departments, subject matter experts, and several advocacy groups. We reviewed dozens of documents, policy papers, and pertinent studies. Ultimately, we determined, only complaints processing systems which ensure both unit effectiveness and fairness to individuals will enhance military readiness. These twin goals will be fulfilled by complaints handling systems which uphold the principles of command commitment and accountability, Service distinctiveness, clarity of policy, effective training, and prompt, thorough and fair complaints handling. The recommendations discussed below are based on these principles and reflect our consensus.

1. Command Commitment and Accountability

A basic principle which underlies the workings of successful Equal Opportunity (EO) programs is command commitment and accountability. Commanders' demonstrated leadership and commitment to EO must be visible and unequivocal. Further, commanders are expected to communicate standards of professional conduct and to build an organizational culture where members are valued, respected, and treated fairly.

Leadership visibility, initiative, and commitment are essential for achieving the goals we have outlined for the Department of Defense. Military leaders at all levels of the organization are responsible for creating a climate within their units which fosters mutual respect in all unit members. They are also accountable for ensuring that their organizations comply with the spirit and letter of equal opportunity policies, directives, guidance, and regulations.

For years, both military and political leaders have recognized that when they fail to support policies forcefully and publicly, those policies will also fail. In the wake of the 1991 Tailhook conference, Representatives Les Aspin and Beverly Byron undertook a study in which they found that leadership commitment was a critical factor in successfully effecting two significant cultural changes in the Armed Forces: racial integration and the elimination of drug use. They argued that, in the 1990s, leadership commitment will be the key to successfully ridding the Department of sexual harassment.²¹

The importance of leadership visibility, initiative and commitment was discussed throughout our deliberations. For instance, Major General Arnold, Assistant Deputy Chief of Staff for Personnel, USA, stressed that decisive action by leaders, not just a passive attitude of fair-mindedness, is what produces fairness. Without the unequivocal support of commanders, our recommended standards will have little impact.

One distinctive feature of military life is the ubiquitous nature of command accountability. The commander is responsible for everything the unit does or does not do and for the welfare of every Service member and military family. The commander is not just the head of

²¹ Les Aspin and Beverly Byron, *Women in the Military: The Tailhook Affair and the Problem of Sexual Harassment* (U.S. Congress, House Armed Services Committee: September 1992).

a mission-driven organization; he or she also is the head of a community. The commander accounts for the performance of the unit as well as the climate within the unit. During and after an investigation into a discrimination complaint, a unit's atmosphere might become poisoned. It is particularly important that the commander restore to wholeness anyone damaged by the process -- complainants, witnesses, or those wrongly accused of discrimination.

Obviously, a commander cannot be everywhere and cannot personally oversee everything. Instead, commanders delegate specific tasks to subordinates or specialists. Commanders tend to retain personal responsibility for those things on which they will be rated or that they know to be important to their own commanders. Service members pay close attention to the programs commanders take personal interest in as opposed to those commanders delegate -- and, in a sense, relegate -- to staff. These choices are Service members' clues about commanders' priorities.

Accountability begins at the senior level; the prevention and elimination of discrimination and sexual harassment can best be achieved by an effective chain of command.²² The Secretary of Defense demands certain standards of conduct. The Office of the Secretary of Defense (OSD) monitors the Services' EO programs by reviewing their annual Military Equal Opportunity Assessments. Historically, Congress has exercised its oversight role through staff-level briefings from the Services' on the status of their EO programs.

In order to ensure accountability throughout the chain of command, commanders must evaluate their subordinate commanders on their ability to create a positive and supportive climate and to prevent and eliminate discrimination and sexual harassment within their units. Also, in order to achieve the goal of individual opportunity and fairness, the responsibility, accountability and commitment to eliminate discrimination must be placed with the chain of command where personnel selections and evaluations are made. The recommendations provided in this section focus on *how* to ensure compliance and hold leadership at all levels accountable.

What indicators should the Services consider in evaluating the efforts of commanders at all levels? There are at least five very clear indicators: issuance of policy guidance, creation of an organizational climate which fosters mutual respect, evaluation of EO in performance reports, monitoring and reporting to ensure EO systems work, and full use of existing resources, such as EO climate surveys.

Issuance of Policy Guidance

Through the years, senior DoD leaders have made known their support for Equal Opportunity programs. Secretary of Defense Robert McNamara, and more recently, Secretaries Weinberger, Carlucci, Cheney, and Perry have each published strong policy statements

²² See DACOWITS, "Overseas Trip Report: July 9-23, 1994." See also Francis X. Clines, "5 Army Cadets Face a Charge of Harassment," *New York Times*, November 1, 1994, p. 1. Clines quotes an Army captain who states, "I see progress here. I probably would not have been brave enough to report this in my day, because I wouldn't have had confidence in the cadet chain of command."

expressing support for DoD's EO programs.²³ In a March 3, 1994, policy memorandum outlining steps to strengthen EO programs, Secretary Perry declared that "Equal opportunity is . . . a military and an economic necessity." Further, he stated that he "will not tolerate discrimination or harassment of or by any Department of Defense employee."²⁴ On August 22, 1994, Secretary Perry signed another policy memorandum prohibiting sexual harassment in the Department of Defense. This policy statement applied to both Service members and civilian employees, updated the Department's definition of sexual harassment by incorporating language from a Supreme Court decision, and directed the Military Departments and Defense Agencies to carry out an eleven-point program. These memoranda replaced the policies of past Secretaries. A strong commitment to EO programs and goals must flow through every echelon of command. Senior leadership's strong support inspires compliance with the spirit and letter of EO directives and regulations.

Recommendation

1. The Secretary and senior military official of each Military Department should publish EO policy statements which include an expression of the institution's commitment to equal opportunity and a statement that complainants will have legal protection from reprisal. Each Service should require commanders, at all levels, to post prominently departmental and command EO policy statements including guidance on how and where to complain.

Creation of an Organizational Climate which Fosters Mutual Respect

Commanders play two complementary but distinct roles. As individuals, they should strive to set a personal example of decency, fairness, and support for EO programs. As representatives of the Service, the Department of Defense, and the U.S. Government, they have a special responsibility to exhibit leadership and initiative within their organizations to ensure that all personnel are treated fairly and that their organization effectively deals with issues that arise.²⁵

Commanders also play an important role in empowering individuals in their units to take direct actions to improve unit climate and respond to incidents when they occur. Bystanders can play an important role in counseling individuals at the time an incident or misunderstanding occurs and can set the stage for quick, positive resolution.

Commanders have a variety of tools to assess organizational climate. For example, the Services have developed surveys designed to identify perceptions about human relations, fair treatment, and discrimination. The Defense Equal Opportunity Management Institute (DEOMI)

²³ On file in the Office of the Deputy Assistant Secretary of Defense (Equal Opportunity), Pentagon, Washington, D.C.

²⁴ Appendix 1.

²⁵ A recent report of the House Armed Services Committee states: "The commitment of leadership to equal opportunity appeared to be the most significant determinant of the racial climate at every facility. . . . Where leadership was viewed as having a strong, sincere commitment, problems were fewer and differences in perspectives were less notable, particularly where such leadership had significant tenure at the facility." U.S. Congress, House of Representatives, Committee on Armed Services, "Interim Report to the Chairman by the Task Force on Equality of Treatment and Opportunity in the Armed Services," July 1, 1994, pp. 1-2.

developed the Military Equal Opportunity Climate Survey (MEOCS) to be administered to personnel in all the Services. The Defense Manpower Data Center (DMDC) is in the process of administering a survey on sexual harassment for administration DoD-wide and will soon conduct a survey on race relations. These climate surveys provide confidential information to commanders about conditions in their units.

Climate surveys signal concern about organizational environment. But, Service requirements for commanders to conduct climate surveys vary. Currently, the Navy requires annual climate surveys at the unit level.²⁶ The Marine Corps strongly encourages its unit commanders to conduct climate surveys annually. Both the Navy and Marine Corps conduct Service-wide climate surveys biennially. The Air Force surveys its units six months after a change of command and biennially thereafter.

Recommendations

2. The Services should strongly encourage commanders to conduct periodic equal opportunity climate assessments.
3. The Services should hold senior officials accountable for the equal opportunity climates in their commands.

Evaluation of EO in Performance Reports

Evaluating personnel on the basis of their positive achievements and leadership will encourage positive actions. Periodic review, feedback, and evaluation of performance are also useful tools for holding individuals accountable for their actions. To varying degrees, the Military Departments require comments on commitment to equal opportunity in officer and noncommissioned officer evaluation reports. Army and Navy officer and enlisted evaluation reports require specific comments on performance in equal opportunity. Marine Corps and Air Force officer and enlisted evaluation reports do not require specific remarks on performance in equal opportunity, but expect equal opportunity performance to be reflected in the categories of "judgment," "leadership," "professional qualities," "cooperation," and "personal relations." Coast Guard officer and enlisted evaluation reports require specific comments on equal opportunity performance in the categories of "working with others," "respecting others," and "human relations."

A review of performance reports indicates that the vast majority of commanders receive high marks for EO. We believe this is a fair reflection of objective reality: Most commanders take EO seriously. Current performance ratings suggest that most Service members also take their EO responsibilities seriously. The challenge is to ensure that the small number of persons who violate EO policy and regulations are identified and held accountable.

²⁶ Soon, the Navy will require climate assessments at the unit level within six months of assuming command and annually thereafter. In addition, the current climate assessment will become a required turn-over item.

We decided not to set a threshold for documenting incidents on performance reports but determined that commanders should be given considerable latitude to exercise judgment in reflecting their importance. Minor incidents might best be handled through counseling, benefiting both the unit and the individuals involved. Repeated or serious incidents should be reflected in performance reports, and commanders have been disciplined for failing to do this.

Recommendation

4. The Services should direct that all rating and reviewing officials be required to evaluate a member's commitment to elimination of unlawful discrimination and/or sexual harassment and to document significant deviations from that commitment in evaluation reports.

Monitoring and Reporting to Ensure EO Systems Work

Another dimension of accountability is to ensure the system and its procedures are functioning as intended. Enhanced discrimination complaint data collection and reporting are essential to give leadership an understanding of the effectiveness of DoD and Service efforts to educate and train personnel, to identify specific problem areas, and to initiate corrective actions.

The Advisory Board on the Investigative Capability of the Department of Defense found that:

The Services have differing requirements for the amount and type of data that must be reported regarding complaints of sexual harassment. The Army has a system that maintains data on the results of investigations, actions taken to resolve the complaint, and categories of complaints. The Navy and the Marine Corps have a system called the discrimination and sexual harassment (DASH) reporting system. Unlike the Army's system, the Navy's and Marine Corps' system contains very detailed information including a narrative of the incident. The system requires reporting regarding how the formal complaint was made, for example, whether it was by request mast, Article 138 complaint, IG hotline, or some other vehicle. It also requires detailed personal and military information regarding the recipient and alleged offender. . . .

The Air Force's system . . . reports the total number of complaints, number of complaints resolved, demographics of the personnel involved, type of discrimination, Air Force specialty code and rank of the complainant and alleged offender, whether the discrimination was substantiated or unsubstantiated, and actions taken by the commander.²⁷

Enhanced data collection and reporting would clearly improve the Department's efforts to deal with complaints of discrimination and sexual harassment systematically.

²⁷ See *Report of the Advisory Board on the Investigative Capability of the Department of Defense*, Vol. I (Washington, D.C.: U.S. Government Printing Office, December 1994), p. 152.

Recommendations

5. OSD should establish uniform data elements, require that the Services use those elements in reporting, and create an easily accessible OSD database on formal discrimination complaints.²⁸ Those standard data elements should include information similar to data now collected by the Services such as the grade, sex, race/ethnic background, component and duty status, and duty specialty of both the complainant and the accused, the basis and nature of the complaint, the actions taken, and number of complaints unresolved after 60 days.
6. Data on Military discrimination complaints should be collected and reported by the Services in accordance with procedures established in DoD Directive 1350.2 and DoD Instruction 1350.3.

2. Service Distinctiveness

The Department of Defense must establish certain goals, principles, and standards of performance. However, the Services differ in mission, organization, and culture. Equal opportunity programs in the individual Military Services will be effective only if they are incorporated into existing Service training and education programs, investigatory structures and procedures, disciplinary structures, and command responsibilities. Therefore the specifics of implementation of our recommendations will, in many instances, vary by Service.

We received a series of presentations from the Army, Navy, Marine Corps, Air Force, National Guard Bureau, Coast Guard, and the Defense Equal Opportunity Management Institute (DEOMI) which compared and contrasted many aspects of Service programs.²⁹ These briefings confirmed that there is wide variance in the Services' discrimination complaints processes and that these differences reflect the way the Services operate. For example, the Army and Air Force operate primarily from large, fixed installations with large support staffs and infrastructures. As a result, the Army has developed centralized EO programs with decentralized, unit-level management. The Air Force has developed centrally managed EO programs. Both Services encourage informal complaint resolution, but rely on formal complaint programs. In contrast, the Navy and Marine Corps operate from ships at sea and from small, self-contained, expeditionary units with minimum support staffs. The Navy and Marine Corps' EO programs are decentralized.

Since we began our deliberations in May 1994, the Services have made a number of improvements in their complaint processes. Most notably, the Navy and Marine Corps have enhanced their formal complaint processes, making them similar to those used by the Army, Air Force, and National Guard.

²⁸ The Deputy Under Secretary of Defense for Requirements and Resources is developing standard data elements in order to expedite reporting in a number of areas.

²⁹ The briefing slides are on file in the Office of the Deputy Assistant Secretary of Defense (Equal Opportunity), Pentagon, Washington, D.C.

We have prepared a matrix which compares various parts of the EO programs of the Services.³⁰ It is important to note that substitution of individual program elements across Services will not necessarily produce an improved or even a workable EO program. The regulations and procedures governing Army and Air Force programs will not work for the Navy and the Marine Corps; nor will the Navy and Marine Corps' operating instructions suffice for the Army and the Air Force.

While the simple substitution of one Service's complaints process for another's is both undesirable and unworkable, general principles and standards can be shared across Service lines. One of our critical judgments involved deciding when to impose Department-wide standards and when to allow for Service distinctiveness. Our charge was to establish basic principles for complaints handling, assess existing policies and practices, and recommend whatever changes might be necessary to ensure the fair and prompt resolution of complaints. "Standards, not standardization" became our paradigm. Thus, we set standards but avoided standardization.

Recommendation

7. The Military Departments should implement and comply fully with the recommendations contained in this report, provide to the Under Secretary of Defense for Personnel and Readiness a plan for implementation, and report at designated intervals on their progress.

3. Clarity of Policy

The statutes which prohibit discrimination against Federal civilian employees on the basis of race, color, religion, sex or national origin do not apply to members of the Armed Forces. Instead, Department of Defense and Service policy, implemented in DoD Directives and Service regulations, prohibit discrimination and sexual harassment and prescribe procedures and remedies for dealing with them. In some instances, the acts which constitute discrimination or sexual harassment also are punishable as crimes under the Uniform Code of Military Justice.

Department of Defense policy is clear about proscribing discrimination and sexual harassment. Still, the implementing specifics are not clear. There are two problems: 1) definitions of key terms, standards of proof, and timelines for complaint processing vary among the Services or are not stipulated; and 2) standards and definitions are subject to change. For example, in August 1994 DoD modified its definition and conceptualization of sexual harassment to conform to the 1993 U.S. Supreme Court decision in *Harris v. Forklift Systems, Inc.* The DoD definition of sexual harassment was clarified to indicate that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would, and the victim does, perceive the work environment as hostile or abusive.³¹

Equal opportunity policies, including discrimination complaint processing procedures, should be viewed as ensuring fair treatment of all members of the organization. Clear and

³⁰ Appendix 4.

³¹ "Workplace" is an expansive term for Service members and may include conduct on or off duty, 24 hours a day.

concise written policies are necessary to ensure that complaint procedures protect the rights of commanders/supervisors, complainants, respondents, and co-workers. Equal opportunity programs should provide for unrestricted access to complaint channels. There must be specific, written policies that define discrimination and sexual harassment and which give examples of offensive behavior. When violations are alleged, policies and procedures should ensure fair treatment for all parties. Policies must specifically proscribe reprisal against complainants, establish and monitor grievance systems, and disseminate information on victim support programs and resources. Each commander should ensure that complaint procedures are clear.

The Department must recruit from the largest possible pool of young Americans in order to ensure that it can continue to field the best possible force. Today's force draws from a number of ethnic, racial, regional, and religious groups. In order to manage this rich mix of Service members, the Department has developed policies and procedures which produce a uniform, unified team -- a team whose combined strength far outweighs the sum of individuals' attributes. The Department of Defense policy is specific with regard to equal opportunity. It is DoD policy that discrimination, which includes sexual harassment, is unacceptable and will not be tolerated. DoD strives to ensure it is an organization where every individual is free to contribute to his or her fullest potential in an atmosphere of respect and dignity.

On July 26, 1948, President Truman issued Executive Order 9981, which declared that there should be equality of treatment and opportunity for all persons in the U.S. Armed Forces without regard to race, color, religion or national origin. From 1948 to 1954, the Department of Defense worked to eliminate racially segregated units from its ranks; the last all-black unit was eliminated in October 1954. Over the years, the Secretary of Defense and the Office of the Secretary of Defense have issued over 30 directives, instructions, and memoranda prohibiting discrimination and promoting equal opportunity. Most of those statements were then supplemented by implementing guidance from the Military Departments. Some of the OSD policy statements focused on a single topic, such as the integration of schools on military installations or the participation of military personnel in civil rights demonstrations. Other statements established either specific programs, such as nondiscrimination in off-base housing or broader equal opportunity programs, to fight against race and sex discrimination.³²

The first DoD Directive on the subject of equal opportunity in the military was issued on July 26, 1963 (before passage of the Civil Rights Act of 1964), by Secretary of Defense Robert McNamara. It established DoD policy "to conduct all of its activities in a manner which is free from racial discrimination, and which provides equal opportunity for all uniformed members and all civilian employees irrespective of their color." It also stated that:

Discriminatory practices directed against Armed Forces members, all of whom lack a civilian's freedom of choice in where to live, to work, to travel and to spend his off-duty hours, are harmful to military effectiveness. Therefore, all members of the Department of Defense should oppose such practices on every occasion, while fostering equal opportunity for servicemen and their families, on and off-base.³³

³² See Chronology in Volume II of this report.

³³ DoD Directive 5120.36, "Equal Opportunity in the Armed Forces," July 26, 1963, Section I, p. 1.

The directive made the Assistant Secretary of Defense (Manpower) responsible for promoting equal opportunity for members of the Armed Forces by giving direction to programs which promote equal opportunity; providing policy guidance and reviewing policies, regulations, and manuals of the Military Departments; and monitoring the performance of the Military Departments through periodic reports and visits to field installations. What the directive lacked was specificity. It did not indicate what elements comprised an Equal Opportunity program, what should be included in Service reports, or what would be examined during base visits. It did not do so partly because no one in the military had previous experience with "equal opportunity" programs and could not be expected to articulate comprehensive programs. It also did not do so partly because the Services wanted to implement their own programs.

Subsequent DoD directives or instructions were issued in 1963, 1964, 1966, 1970, 1971, 1973, 1976, 1978, 1987, and 1988. Each revision built upon the previous documents and added one or more new concerns to be incorporated into the overall EO program. The Department's record indicates a willingness to face problems as they emerged and to craft meaningful programs.

Over the past 15 years, the Office of the Secretary of Defense (OSD) has also issued about 10 statements or revisions to directives dealing with sexual harassment. As with the discrimination policies, these have been supplemented by additional guidance from the Services. Some of the statements focus on military personnel, others deal with all DoD employees, and still others extend to contractors. Four of the most recent OSD policy statements are:

- DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program," issued December 23, 1988, defines and clearly prohibits sexual harassment and discrimination.
- DoD Instruction 1350.3, "Affirmative Action Planning and Assessment Process," issued February 29, 1988, gives specific instructions on the monitoring and annual reporting of data on discrimination and sexual harassment complaints. Each Service incorporates this guidance into its own specific implementing regulations.
- A July 12, 1991, memorandum from then-Defense Secretary Dick Cheney outlined a seven-point action program designed to eradicate sexual harassment. Each DoD Component was directed, among other things, to issue clear policy statements annually that explain sexual harassment and reaffirm that it will not be tolerated; to train people how to identify and prevent sexual harassment, with specific emphasis on harassment by co-workers; to investigate promptly and thoroughly and to resolve every sexual harassment complaint; and to inform DoD personnel that failure to comply with the sexual harassment guidelines will be reflected in their annual performance ratings and fitness reports.
- A March 3, 1994, memorandum from Secretary Perry, laid out a five-point plan designed to strengthen the Department's EO programs. This memorandum re-established the office of the DASD (EO), restructured the Defense Equal Opportunity Council, launched a study of the officer "pipeline," encouraged greater use of career

development programs to improve representation of women and minorities among DoD's civilian management, and called for the development of special EO training seminars for senior leaders.

It is a military imperative that clear and sound DoD policies ensure the prohibition of discrimination, as well as an accurate assessment of the nature and scope of discriminatory activity within DoD. The DoD IG found that the lack of clear and consistent DoD definitions complicates analysis and reporting.³⁴ The DoD IG found no standard definitions for any type of discrimination, except for sexual harassment, within the DoD. As a result, anything from an isolated instance of "name calling" to arbitrary personnel actions based on sex or race could be labeled and reported as discrimination.

The DoD Directive 1350.2 defines the terms "sexual harassment" and "discrimination."³⁵ All of the Services use the directive's definition for sexual harassment. However, none of the Services uses the directive's definition for "discrimination." The Army defines "institutional" discrimination, the Air Force defines "institutional," "arbitrary," and "personal" discrimination, and the Navy and Marine Corps have different definitions for the same term -- "discrimination" -- all of which could lead to different legal interpretations. According to the various definitions by the Services, discrimination may be one or more of the following:³⁶

- different treatment based on race, gender, etc. (Army),
- depriving an individual of a right (Air Force),
- denying an individual equal opportunity (Marine Corps),
- denying an individual equal treatment (Navy),
- any action that unlawfully or unjustly results in unequal treatment (Air Force), and
- using terms to degrade or infer negative statements pertaining to race, gender, etc. (Air Force).

The lack of standard definitions creates the situation where an action or offense could be considered "discrimination" in one Service, but not in another.

The lack of standard terms affects the reporting and analysis of discrimination complaint data. For instance, the Air Force uniquely defines as discrimination the use of any term that "degrades or infers negative statements" pertaining to age, color, national origin, race, ethnic group, religion, or sex. The DoD IG found six Air Force cases where using the term "bitch" once was investigated, substantiated, and statistically reported as discrimination. The available documentation suggested that the other Services treat similar conduct as inappropriate or unprofessional behavior, but would not routinely label or report such conduct as "discrimination."

Additionally, DoD Directive 1350.2 does not define the term "reprisal," although it is defined within DoD Directive 7050.6 (Military Whistleblower Protection).

³⁴ Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations*.

³⁵ See DoD 1350.2 in Volume II of this report.

³⁶ Appendix 5 contains the complete definitions for "discrimination" published by each Service.

Finally, briefings to the Task Force by each of the Military Services emphasized the importance of the informal receipt and resolution of complaints as an alternative to the filing of formal complaints of discrimination. DoD Directive 1350.2 does not provide for an informal complaints resolution process, nor does it define the terms “formal complaint” and “informal complaint.”

Recommendations

8. OSD should clarify the definition of “discrimination” found in DoD Directive 1350.2. The Military Departments should review all appropriate implementing documents and revise their definitions of “discrimination,” whenever necessary, to conform with the DoD definition.
9. The Secretary of Defense issued a memorandum on sexual harassment on August 22, 1994, which modifies the existing definition as contained within DoD Directive 1350.2. OSD should revise that directive to use the modified definition, and the Military Departments should revise definitions in all implementing documents to conform to the new definition.
10. OSD should revise DoD Directive 1350.2 to define the terms “complainant,” “informal complaint,” “formal complaint,” “reprisal,” “legal sufficiency,” and “protected communication;” and the Military Departments should revise definitions in all implementing documents to conform to the new definitions.

4. Effective Training

Given the dynamic nature and high mobility of the DoD workforce, education and training are essential to ensuring that the equal opportunity policies, expectations, and procedures are clear to all and are consistently reinforced. Training should also strive for long-term culture change by focusing on values, support networks, teamwork, fairness and responsibility. Equal opportunity and human relations training should be incorporated into career development education for all personnel throughout the career life cycle. Specifically, training for leaders and commanders should stress personal involvement and accountability.

The Department of Defense Directive 1350.2 outlines policy, responsibilities, and requirements for equal opportunity and human relations education and training, including the prevention of sexual harassment, within the Department. The Department’s policy is to provide education and training in EO and human relations. The heads of DoD Components are responsible for ensuring that education and training programs are executed. The requirements for equal opportunity and human relations education and training are: (a) all military personnel, including those selected for command positions and those in the rank of flag or general officer, should receive education and training; (b) education and training programs should be conducted at installation and fleet unit commands, military accession (entry) points, and throughout the

system of professional military education; and (c) the training should be conducted on a recurring basis.

The Defense Equal Opportunity Management Institute (DEOMI) is responsible, specifically for: (a) training all military personnel assigned to military EO billets and staff officers who directly manage EO and human relations programs; and (b) providing assistance or consultation services to DoD organizations in developing specific curricula and training for EO and human relations -- in professional military education programs, for instance.

According to a March 1994 report by the DoD IG, over the last 21 years, the DEOMI has graduated over 12,000 trained personnel for the Armed Forces -- both active duty and Reserve Component personnel. Active duty graduates total approximately 4,000 for the Army; 1,200 each for the Navy and the Air Force; and six for the Marine Corps. The DoD IG interviewed 65 DEOMI graduates currently serving as EO advisors (40 Army, 15 Navy, and 10 Air Force), the majority of whom were enlisted personnel. The EO advisors told the IG that the training they received adequately prepared them for their jobs. However, the DoD IG reported that the EO advisors "believed their low rank was a barrier to effective communication with the commanders they advise. They stated they were unable to obtain the confidence and support required to fulfill their roles and responsibilities."³⁷

In compliance with DoD policy, each Department has established an EO and human relations education and training program. At a minimum, each program is conducted at accession and entry points, incorporated into various phases of enlisted and officer professional military education, administered on a recurring basis, and documented in individual personnel records.³⁸ Some EO and human relations education and training also occurs upon assignment to new duty locations, in courses that prepare individuals to assume command or leadership positions, and in commanders' calls (unit-level meetings). Much of the unit-level training is done on an annual basis.

However, professional military education curricula for mid- and senior-level commanders does not include material on managing military equal opportunity or discrimination complaint systems, holding military subordinates accountable, managing civilian EEO and discrimination complaints programs, managing EO programs in a joint environment, or the commander's role in, and responsibilities for, equal opportunity programs. Professional military education for both officers and non-commissioned officers which stresses their leadership responsibilities and provides information on the legal and organizational frameworks within which they operate would increase the effectiveness of EO programs. For instance, case studies can provide examples about how difficult cases have been handled and what sanctions have been given, thereby providing a toolkit for commanders which can provide options to military leaders confronted with EO challenges.

³⁷ Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations*, p. 8; see also pp. 6-7 (attached at Appendix 10).

³⁸ See Volume II of this report for a summary of current professional military education EO training provided by the Services.

To address this concern, the Secretary of Defense -- in his March 3, 1994, memorandum on EO³⁹ -- laid out a program that gives high priority to preventing sexual harassment and discrimination and emphasizes that the Department's senior military and civilian leaders will be well informed of their responsibilities. Secretary Perry has directed DEOMI to conduct training for all military and civilian leaders as well as a mandatory two-day course for all new general/flag officers and new members of the Senior Executive Service.

Recommendations

11. OSD should require and the Services should specify the qualifications and grades of personnel serving in EO billets and ensure that personnel serving in EO billets meet the minimum qualification and grade requirements.
12. The Defense Equal Opportunity Management Institute (DEOMI) should continue to specify standards and develop training for personnel serving in EO billets. A training and development plan for EO personnel should include requirements for continuing education to ensure currency and mastery of developing EO knowledge.
13. The Services should establish minimum training requirements for personnel who are not assigned to EO billets, but who have responsibilities associated with the administration of EO programs or the resolution of discrimination complaints (e.g., inspectors general, chaplains, personnel working in victim assistance or support programs, first sergeants, senior enlisted advisors, command master chiefs, command sergeants major, and inquiry or investigating officers), receive training to carry out their EO duties commensurate with the nature and scope of those duties. The training criteria established by the Services should specify that the minimum training requirements for such personnel have been reviewed and commented upon by the DEOMI.
14. DEOMI should review and comment on Service-wide EO training materials produced by the Military Departments concerning EO and human relations education and training.
15. The Services should provide EO training to all personnel and should incorporate it into the career life-cycle in "building block" fashion.
16. The DASD(EO) should establish procedures for recurring quality reviews of each of the services offered by DEOMI: education and training, research, MEOCS, and consultation. For instance, DEOMI should implement regular customer feedback surveys which assess levels of customer satisfaction and which solicit recommendations for changes in each of the core services offered by DEOMI. In addition, the DASD(EO) should establish procedures for a biennial review of all DEOMI curricula by Service representatives and others to include course content, instructor qualifications, and methods of instruction.
17. DoD policy should be amended to require training for all commanders and civilian managers which includes comprehensive material on their roles and responsibilities for

³⁹ Appendix 1.

EO programs, including discrimination complaint processing systems, reprisal detection and prevention, monitoring of subordinate EO climates, and managing civilian EEO systems.

18. Professional military education for both officers and non-commissioned officers should stress their leadership responsibilities to ensure effective EO programs and provide information on the legal and organizational framework within which they operate. In particular, professional military education courses should include case studies which include examples of sanctions imposed for discriminatory offenses.

5. Prompt, Thorough and Fair Complaints Handling

An essential element of a successful program to deal with allegations of discrimination is a complaint handling system that ensures prompt, thorough and fair complaints handling, provides for resolution at the lowest appropriate level, offers options to the complainant, protects the rights of all, prevents reprisals, and ensures the prompt resolution of complaints. Without this, individuals may not be willing to come forward because of concern about loss of privacy and damage to careers. And the Services will not be able to deal effectively with these issues.

The Services all have systems in place for handling complaints of discrimination and sexual harassment. Currently, within each Service the same procedures are used for processing complaints involving either discrimination or sexual harassment. We believe that this works better than having separate systems. Sexual harassment is a form of sex discrimination, and all forms of discrimination in the military share a common framework of awareness, training, and command accountability. An individual complaint may contain elements of both discrimination and sexual harassment which a single system can handle efficiently and simultaneously. Furthermore, adding infrastructure or systems to deal with each form of discrimination separately would be confusing to complainants and would require additional staffing.

For the most part, the Services' systems for complaint handling are adequate and are designed according to each Service's distinct mission. These complaint processing programs support unit effectiveness and individual fairness. However, there are problems in the system which sometimes prevent complaints from being handled properly.

The Services use different processes for handling complaints of discrimination, including sexual harassment. After hearing the Services explain their complaints processing systems, two things became clear: (1) each Service's discrimination complaint process must support its military mission and (2) standards, but not standardization, are needed to improve the way in which the Services handle complaints.⁴⁰

We offer recommendations on various aspects of complaints handling: identifying discrimination and sexual harassment; characteristics of informal and formal complaint processes; where to file a complaint; the complaint form; protection from reprisal; the conduct of

⁴⁰ See section 2, "Service Distinctiveness."

investigations; timelines for investigations; fair, thorough and adequate investigations; legal sufficiency; consistent sanctions; feedback and follow-up; confidentiality of records and documentation; appeals; and support services.

Identifying Discrimination and Sexual Harassment

Our recommendations on training and education of personnel combined with clear policy statements should enable individuals to have a clear understanding of expected behavior, both their own and others. When an incident of possible sexual harassment or discrimination occurs in the Military Departments, the complainant or bystanders must first be able to identify it and determine various options to deal with it. He or she must also know options for where, how and with whom to discuss or to report the incident. These first steps -- recognizing and dealing with an incident of discrimination -- should be easy and comfortable for the complainant.

The importance of offering assistance and guidance to Service members following an incident of discrimination or sexual harassment has been recognized by several Services. In attempts to counteract confusion which may have occurred, the Army, Navy, Marine Corps, and National Guard recently introduced telephone helplines, both nationally and locally. These helplines have proven very effective in educating complainants during the early stages of complaint handling. They provide confidential advice and information on procedures for dealing with discrimination and sexual harassment. Electronic mail and electronic bulletin boards have also facilitated communication on these matters. Formal complaints are not to be filed over these helplines or via the other devices.⁴¹

The complainant may report incidents of discrimination informally through the chain of command or file formally with the chain of command in each Service. The housing referral office, chaplain's office, and medical agencies will accept informal and formal complaints and offer advice in the Army and Navy. In the Air Force, informal complaints are reported at these same locations; however, formal complaints must be filed in the Social Actions Office. The Coast Guard created an Office of Civil Rights specifically for handling discrimination complaints. The distinctiveness of each Service has guided its policy on how to handle both formal and informal complaints.

Recommendations

19. Each Service should ensure that the chain of command remains an integral part of the processing and resolution of all complaints of discrimination, including sexual harassment.
20. Each military Service and Reserve component should establish toll-free or local helplines that provide, at a minimum, information on what kinds of behavior constitute discrimination and sexual harassment, how and where to file a complaint. No complaints

⁴¹ This is in contrast to the DoD IG's Hotline, which is used to report allegations of fraud, waste and abuse, in addition to discrimination and sexual harassment.

should be accepted or filed over these helplines. Helpline personnel must be well trained in Service and DoD policies for handling discrimination complaints and be able to address Reserve component situations.

Characteristics of Informal and Formal Complaint Processes

Informal processes are intended to resolve complaints at the lowest appropriate level. No documentation is required in the resolution of informal complaints; rather, such complaints may be presented verbally to the offending party or to someone in a position of authority. The goal of an informal process is to stop the discriminatory or harassing behavior quickly. It is an unencumbered process: the Service member determines with whom and at what level to start the process. A complainant who is dissatisfied with the response to an informal complaint can appeal by filing a formal complaint.

Formal complaints of discrimination, on the other hand, must be documented. Formal complaints begin when the complainant files an official form describing his or her complaint. An "audit" trail is established as specialists and investigators follow official procedures to investigate and resolve the complaint. Complainants dissatisfied with the outcome of formal complaints can appeal through clear, official channels. A commanding officer with UCMJ authority is involved in the process. The goals of formal processes are to stop the discrimination or harassing behavior, and, when appropriate, to make the complainant whole and to discipline the offender.

Informal Process

Once a Service member is convinced that discrimination or harassment has occurred, he or she can choose to resolve the problem informally or to file a formal discrimination complaint. The Services emphasize resolving complaints informally and at the lowest appropriate level because informal processes provide many options for prompt, fair resolution. Informal resolution can prevent complaints from escalating and, often, can resolve complaints with minimal consequences to respondents and complainants. In fact, the Department's 1988 survey on sexual harassment revealed that a large number of Service members were resolving concerns informally.

Informal resolution may involve direct confrontation, third-party mediation, discussions with the unit commander, or other appropriate remedies. Direct confrontation is used widely in the Military Services and is the most effective way to stop discrimination and harassment. There are advantages to other informal processes. For instance, a unit commander receiving an informal complaint is in a position to assess unit climate, provide leadership, prevent recurrent behavior, and discourage reprisals.

There are no clear guidelines for resolving complaints informally, and each Service handles it differently. Such informal mechanisms include the Air Force's and National Guard's use of mediation, the Army's use of "Alternative Dispute Resolution Strategies," the

Navy/Marine Corps's oral and written methods of confronting the harasser, and the Coast Guard's use of a written form specifically designed for informal complaints.

Recently, the Services have begun to emphasize the use of alternative dispute resolution systems in addition to formal complaint processes in order to speed resolution. The Navy's Informal Resolution System (IRS) pamphlet lists and categorizes specific types of sexual harassment.⁴² These informative pamphlets are widely distributed throughout the Navy. It is the first attempt by any Service to identify and characterize a behavior according to the degree of severity.⁴³

In the Air Force, Army, and National Guard, informal complaints are generally not documented by the unit or reported to higher headquarters; therefore, neither the adequacy of informal resolution nor complainant satisfaction with the informal process can be determined. Informal complaints in the Navy can be reported verbally and, if unresolved, a request in writing for a commanding officer's request mast can be submitted. The Marine Corps adheres to the same procedures as the Navy. The Coast Guard, on the other hand, uses a written form specifically designed for informal complaints. The information gathered from this form is used to assess a unit or installation's EO climate. Since both options, documented and undocumented, are effective in processing informal complaints, we make no recommendation for uniformity.

Recommendations

21. The Services should establish integrated and comprehensive complaint resolution systems for both informal and formal complaints. A comprehensive system will provide a wide range of choices to a complainant for addressing a perceived problem, link various support systems, and ensure that qualified personnel with equal opportunity training are available to assist a complainant.
22. As a general rule, complainants should be encouraged to resolve complaints informally before filing formal complaints.
23. Each Service should make available to its members information on procedures for filing a formal or informal complaint. The procedures should be well documented in pamphlets, booklets, training manuals, or other appropriate publications and widely publicized in locations where individuals seek advice for discrimination complaints.

Formal Process

⁴² Department of the Navy, *Resolving Conflict . . . Following the Light of Personal Behavior*, NAVPERS 15620 (Washington, D.C.: U.S. Government Printing Office, 1993).

⁴³ Although rape and sexual assault are noted in the IRS pamphlet as unacceptable criminal offenses, they are categorized as "Red Zone" behaviors of sexual harassment. The course of action recommended in the pamphlet for such behavior is to "inform the chain of command of actions taken or needed and determine whether taking formal action is appropriate or whether the Informal Resolution System can resolve the problem." The latter response is inappropriate for criminal offenses. Department of the Navy, *Resolving Conflict*, p. 8.

The process for filing a formal complaint begins when: (1) a complainant chooses not to proceed informally; (2) complainant is dissatisfied with the outcome of the informal process; or (3) the severity of the complaint warrants remedies, including disciplinary action, that are not available through the informal process.

Until recently, in the Navy and Marine Corps, to file a formal discrimination complaint, a Service member had to file an Article 138 complaint against a commander.⁴⁴ Service members were reluctant to report discrimination or sexual harassment through the Article 138 process. Navy leaders understand that this process is problematic and have changed it.

Recommendation

24. The Services should ensure that a simplified, formal complaint process is in place for discrimination and sexual harassment complaints which supplements the Article 138 process.

Where to File a Complaint

When a complainant has identified an incident of harassment and has decided that he or she wants to file a formal complaint, it is important that they know where and with whom to file. The Army offers several options where a person can file a formal complaint. The locations are similar to those for resolving an informal complaint, but include the Army Inspector General's Office. A formal complaint in the Navy and Marine Corps may also be filed at multiple agencies, including the office of the Service IG. A member of the Air Force may seek advice and counseling for filing a formal complaint at the locations mentioned above, but a formal complaint may only be filed through the Social Actions Office or with a Wing IG. Similarly, in the National Guard, a formal complaint may only be filed through the Military Equal Opportunity or Social Actions Office.

The U.S. Coast Guard has used a centralized office for processing complaints since the 1970's, when it established an Office of Civil Rights to handle and resolve discrimination complaints. The advantage shared by the Air Force and the Coast Guard is explained in a study by Dr. Mary Rowe. According to Rowe, "having a central office means that complaints are generally dealt with in a similar and consistent fashion, which is often seen as a virtue for formal adjudicatory procedures."⁴⁵ Further, centralized complaint processing results in improved data collection. A central office or trained EO point of contact provides a highly visible referral point, symbolizes command commitment, and ensures a well trained staff who can develop competencies over time. This person or group of skilled EO professionals can support commanders with professional consultation and offers an alternative to filing a formal complaint with the unit or with the inspector general, thereby working within the chain of command to find facts and resolve complaints.

⁴⁴ 10 U.S.C. § 938.

⁴⁵ Mary P. Rowe, "Harassment Complaint Procedures: Consider a Systems Approach with Choices for Complainants," draft paper, 1994, p. 14.

Recommendation

25. The Services should provide a central point of contact at the installation level or below, staffed with qualified and trained EO counselors, to receive formal complaints of discrimination and sexual harassment.

The Complaint Form

The process of filing a formal complaint begins in most instances with the complainant completing some type of complaint form. Each of the Services, except for the Coast Guard, uses a form to record information about the complainant and the allegations of discrimination. Upon review of all Service forms, we found that some essential elements to expedite the process and ensure a more thorough investigation were needed. For example, the Army recently adopted a form which documents each step in the complaint process. The Navy has developed a form, based upon the Army's, which documents each stage in the process from filing to final decision. The Air Force uses a standard intake form for documenting formal EO complaints. This form, which has been in use for a number of years, is currently being revised to include timeline requirements. The Army's form contains the most detail; it lists specific steps within the complaint process and requires the signature of the person responsible for each step.

When our Task Force convened, only the Army required a complainant to sign an oath attesting to the accuracy of his or her complaint. In November 1994, the Navy adopted a complaint form requiring complainants to swear to the accuracy of their complaints. Although this act impresses on the individual the seriousness of the complaint process, it is not in fact necessary to have sworn testimony on a complaint form to prevent a complainant from making false allegations or to ensure that the complainant is telling the truth. Articles 107 and 134 of the UCMJ indicate that making a false official statement on an official document carries a greater penalty than false swearing.⁴⁶

Recommendation

26. The Department should revise DoD Directive 1350.2 to identify Department-wide data elements and procedures which must be included in each Service's standard complaint form. Each Service form should provide for the documentation of each step in the complaint process, including pre-decision updates and post-decision follow-ups with the complainant. The Services should require the complainant to sign his or her complaint, thereby certifying the complaint is made in good faith.

Protection from Reprisal

⁴⁶ See 10 U.S.C. § 907 and 10 U.S.C. § 934 (False Swearing).

One of the central tenets of discrimination complaints processing is that Service members have the right to complain. This right is legally protected by the Whistleblower Protection Act. Most often invoked in cases of fraud, waste, and abuse, this protection also applies to Service members who make complaints of discrimination.

Reprisal is the most insidious threat to the integrity of the Military Services' efforts to eliminate discrimination and harassment. Fear of reprisal looms over Service members and discourages them from filing complaints. The frequent occurrence of reprisal reinforces that fear, further discourages complaints filing, and undermines the integrity of complaints processes. Worse, incidents of reprisal cast doubt upon command commitment to equal opportunity goals and programs.

A Service member filing a complaint or reporting an incident of discrimination or sexual harassment should not fear reprisal or retaliation. The Services forbid reprisal against their members who make complaints of discrimination, including sexual harassment. Still, briefers and experts who addressed us explained that reprisal and fear of reprisal are widespread problems for Service members. There are many types of reprisal, two of which are especially noteworthy: retaliation by peers or co-workers and reprisal by supervisors.

Retaliation by co-workers can be especially difficult to prevent. They may take the form of anonymous acts, such as phone calls or derogatory material posted on unit bulletin boards, or comments which create a hostile unit climate. Co-workers may begin to take sides in a dispute and may be convinced that they are acting in the best interests of the organization. If incidents of retaliation occur, they require immediate attention from unit commanders, who should state plainly their commitment to equal opportunity, proper treatment for all individuals, and their pledge to a fair and complete process of complaint handling. Bystanders and co-workers who show support for complainants can greatly diminish the possibility of peer retaliation.

In a report published in early 1994, the National Association for the Advancement of Colored People (NAACP) found that fear of reprisal was widespread: "[P]ersonnel who had and personnel who had not used EO channels shared a common reaction -- fear of reprisals."⁴⁷ Further, the NAACP reported:

In a military case, a black non-commissioned officer, found innocent of court-martial charges, was involuntarily reassigned to another unit, received a mediocre performance rating, and a low level end-of-tour award. When he sought to file a racial discrimination complaint against his commander for these actions, the EO advisor stated, "you don't want to mess with it" -- implying that the commander will strike back.⁴⁸

In addition, the NAACP found that Service members believed they would be ostracized if they filed complaints; they would no longer be seen as team players.

⁴⁷ See NAACP, *Continuing The Search*, p. 10.

⁴⁸ NAACP, *Continuing the Search*, p. 10.

The four female Service members who testified before the House Armed Services Committee on March 9, 1994, highlighted the fact that reprisal is a significant problem. One of the witnesses, a Navy lieutenant, recalled her experiences after filing a complaint of harassment:

After my report, the leadership . . . took no action to isolate me from the [subject]. I decided to go further up my chain of command. . . . No action was taken. . . . I called Senator John Breaux . . . for assistance. When the executive officer heard I was talking to a Member of Congress, hours later, I was ordered to undergo psychiatric evaluation. I was placed in a locked psychiatric unit and evaluated. . . . I was found fit for full duty. . . . However . . . I had to spend the rest of the weekend in a locked, non-segregated psychiatric unit. . . . I received an adverse fitness report in retaliation for my report of sexual harassment. . . . I relied on my chain of command to protect me from reprisal and to take swift and tough action. My good faith reliance was not justified.⁴⁹

Another witness, an Air Force sergeant, testified that she had suffered retaliation from both her supervisors and her peers. In testimony before the HASC, she alleged that her official, written job performance ratings were downgraded, and the likelihood that she would be promoted diminished. She further alleged that her supervisors fabricated and placed in her file documents alleging misconduct and poor performance. The sergeant testified that she became the object of the investigation, rather than her harassers. When she filed complaints about these retaliatory actions, she found her car tires slashed and wheel bolts loosened.

During these Congressional hearings, a subject matter expert argued: "Until complainants know that their complaints will be taken seriously and that the offenders and anyone else who retaliates against the complainants will be swiftly and appropriately dealt with, the system will not work properly."⁵⁰

Subject matter experts who addressed our Task Force agreed that reprisal prevention is a critical element of successful complaints programs. Dr. Mary Rowe of the Massachusetts Institute of Technology recommended that reprisal prevention be seen as a basic task of complaint handlers.⁵¹ Georgia Sadler of the Women's Research and Education Institute asserted that reprisal prevention is the most important element of a complaints processing system. Susan Barnes of WANDAS recounted several examples of reprisal and argued that, in many cases, retaliation faced by complainants was worse than the sexual harassment incident itself.⁵²

Both perceived and actual incidents of reprisal discourage Service members from filing complaints. No doubt, when considering whether to file a complaint, a Service member examines the outcomes of others' complaints. According to a DoD survey of military personnel

⁴⁹ Lieutenant Darlene S. Simmons, U.S. Naval Reserve, statement before the House Armed Services Committee, in U.S. Congress, House of Representatives, Committee on Armed Services, *Sexual Harassment of Military Women and Improving the Military Complaint System*, hearing held March 9, 1994, pp. 4-5.

⁵⁰ Patricia M. Gormley, "Sexual Harassment and Women in the Military," prepared testimony in House Armed Services Committee, *Sexual Harassment of Military Women*, hearing held March 9, 1994, p. 65.

⁵¹ See Mary Rowe, "Specifications for an Integrated Dispute Resolution System for Dealing with Harassment," Massachusetts Institute of Technology, 1994.

⁵² WANDAS: Women Active in our Nation's Defense, their Advocates and Supporters.

in 1988, 26% of women and 16% of men who had experienced harassment reported some form of change in their work conditions which could be considered reprisal.⁵³

The DoD whistleblower regulation addresses reprisal by supervisors.⁵⁴ Specifically, it protects Service members from reprisal in the form of adverse personnel actions. Section 1034 of Title 10, U.S. Code, from which the whistleblower regulation was promulgated, originally established an anomalous situation: Service members who complained to an IG, a Member of Congress, or a member of a DoD audit, inspection, investigation or law enforcement organization were protected from reprisal, while those who complained through the chain of command were not. The Air Force sergeant mentioned above, for example, was not covered by the statute or DoDD 7050.6 because she initially complained through command channels. The DoD IG recommended that DoD extend whistleblower protection to Service members who report allegations of discrimination in accordance with Service regulations. Before we completed our deliberations, the Congress extended whistleblower protection in the FY95 Defense Authorization Act.

In order to effectively address these concerns, “reprisal” must be defined correctly. The whistleblower regulation defines reprisal as follows:

Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action against a military member for making or preparing a protected disclosure.

This definition of reprisal does not address hostile work environments.

Clearly, complainants must be protected from all types of reprisal. Further, the Services need clear, well-publicized reprisal complaint procedures. Adequate safeguards against reprisal are critical to ensuring a fair and equitable complaint system, one in which members have a high level of confidence. While each Service prohibits reprisal, more should be done. While the Services cannot “guarantee” freedom from reprisal, the Department can ensure that it is effectively addressed.

Recommendations

27. OSD should rewrite, and the Services should adopt, a standard definition of reprisal which conforms with recent case law and includes specific examples of reprisal behaviors, such as commander-condoned peer reprisal.

⁵³ See Defense Manpower Data Center, “Sexual Harassment in the Military: 1988,” September 1990, Tables 3.4 and 3.5.

⁵⁴ Department of Defense Directive 7050.6, issued September 3, 1992.

28. The Services' discrimination complaint processing systems should contain specific reprisal prevention procedures, to include guidance for commanders regarding the relocation or reassignment of complainants.⁵⁵
29. As stated in the FY95 Defense Authorization Act Conference Report, the DoD IG should draft an implementing regulation that provides whistleblower protection -- that is, protection from reprisal -- for Service members who report allegations of discrimination, including sexual harassment, to a Member of Congress; an inspector general; a member of a DoD audit, inspection, investigation, or law enforcement organization; or any person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.
30. To deal with reprisal by peers and co-workers, the Services should implement follow-up at the local level and improve training for leaders. This training should be associated with the Services' reprisal prevention procedures described above.
31. DoD Directive 1350.2 should be revised to explicitly prohibit reprisal in discrimination and sexual harassment cases.

The Conduct of Investigations

Once a complaint has been filed with an EO advisor, an investigatory process is launched. After informing the commander or other appropriate parties of the complaint, the EO advisor initiates an administrative process of fact-finding or clarification. Typically, this process includes interviewing the complainant, the subject, and key witnesses, and preparing a written report for the commander. Service policy prohibits EO advisors from conducting formal investigations; still, investigating officers may use the clarifying reports prepared by EO advisors.⁵⁶

Based on the findings reported by the EO specialist, the commander decides whether a formal investigation is warranted. The commander might choose to take action based solely on the information gathered during the preliminary fact-finding. If the commander decides to launch a formal investigation, he or she then appoints an investigating or inquiry officer (IO). Commanders are required to appoint an uninvolved, disinterested officer equivalent or higher in rank to the complainant and the accused. Service regulations require the IO to use IG investigatory procedures, such as gathering sworn testimony.

⁵⁵ Normally, the complainant should not be involuntarily transferred. Where there exists the threat of bodily harm to the complainant from an unidentified person(s), or when commanders otherwise determine that a transfer is necessary, the commander should document the reason(s) for the transfer and inform the complainant.

⁵⁶ The role of the EO advisor varies among the Services. For example, in the Air Force, the role of the EO advisor is simply to clarify the information and not to fact-find or interview involved parties. On the other hand, an EO advisor in the Army is responsible for informally investigating complaints. In the Navy and Marine Corps, EO specialists provide assistance and advice to commanders while investigating officers conduct investigations.

Typically, the IO is not trained in EO policy, IG procedures, or legal requirements. Nor do the Services currently proscribe any particular briefing on those issues once the IO is appointed. Therefore, the IO's knowledge of these important issues is limited to what he or she takes the initiative to learn. Complaints of discrimination are so specific that IOs should consult with EO specialists on the particular character and sensitivity of such complaints. In addition, the IO would be expected to follow the guidance provided in Service manuals for conducting formal investigations and to obtain a review for legal sufficiency as well as an EO review to ensure that all aspects of the alleged discrimination are investigated prior to reporting to the commander.

Recommendation

32. The Services should require the appointing commander to instruct the IO to seek the advice of an EO specialist as he or she conducts the investigation.

Timelines for Resolution

The length of time a Service member has to file a formal complaint varies among the Services. For example, the Air Force and National Guard allow up to six months while the Marine Corps, Army and Coast Guard give a complainant 60 days; the Navy allows only 45 days (or longer, upon the discretion of the commanding officer). We reviewed the reasons for the different timelines among the Services and concluded that, in most cases, 60 days is sufficient for complainants to bring forth their complaints. In dynamic organizations like the Military Services, it is very difficult to adequately investigate aging complaints. Personnel are transferred, memories fade, and the further the complaint follows the incident, the more complex the relationship between the filing of a complaint and other factors involving the complainant, the accused, and the Service.

Timeliness of processing is fundamentally important to complaint handling. The longer a complaint takes to be resolved, the more complex it is likely to become and the more difficult resolution is likely to become. A complainant may lose confidence in the system, search for other options for resolving his complaint, or feel that the delay is a form of retaliation. Normal, unrelated personnel actions that occur during this time may be seen as retaliation.

In the case of one complainant who experienced a lengthy delay after filing her complaint, the investigating officer (IO) explained that he was deployed for 200 days on contingency during the investigation. In addition, he stated that report revisions delayed the investigation. If the commander overseeing this investigation had followed Air Force IG guidelines or directives, he or she would have assigned a new IO to replace the deployed IO.

The Services have systems in place that can process and resolve complaints in a prompt manner. Each of the Services has established a general time frame for processing discrimination complaints; that is, each has stipulated a certain number of days from the filing of a formal complaint to resolution. The Service time frames differ. Both the Army and Air Force have established interim timelines within their overall processing time frames for the completion of

sub-steps. The Navy has established such interim timelines. Currently, there are no penalties for failure to meet interim timelines or overall time frames. Still, it should be noted that Admiral Boorda, Chief of Naval Operations, recently established strong incentives for timely complaint processing: Complaint handlers must report to him when they fail to meet established timelines.

The Services have varying timelines for processing complaints ranging from 30 days to one year. The example in Appendix 11 shows recommended timelines for completing an investigation in 60 to 80 days. Investigations conducted by Service IGs will be in accordance with Service IG timelines.

An exception can be made for the Reserves and National Guard because of the complexities surrounding their actual duty time. The unique characteristics of the Reserve Components and joint organizations are discussed in later chapters of this report.

Recommendation

33. The Services should encourage Service members to report EO complaints promptly. In most cases, complaints should be filed within 60 days of the incident, or if a series of incidents, within 60 days of the most recent incident.
34. The Services should ensure that investigative timelines are met.

Fair, Thorough and Adequate Investigations

To give Service members confidence in the complaints handling process, DoD Directive 1350.2 requires the heads of DoD Components to ensure that all discrimination complaints are investigated in a “fair, impartial, and prompt manner.” Each military Service has developed and issued regulations for the processing of discrimination complaints, including sexual harassment.

A 1994 report issued by the DoD IG reviewed the adequacy of discrimination complaint investigations conducted by the Military Services. As part of this study, the DoD IG developed comprehensive criteria for evaluating the adequacy of complaint investigations. These criteria measured the independence of the investigator, the thoroughness of the investigation, and other related factors.

The DoD IG’s report concluded that 86% of the investigation case files reviewed contained sufficient evidence to support the conclusions drawn and satisfied the IG’s criteria for “adequacy.” In addition, the report by the DoD IG found that allegations of discrimination had been substantiated or partially substantiated in 56% of the case files reviewed.

The investigations considered inadequate by the DoD IG were deficient in several areas including: “Complainant or key witnesses were not interviewed,” “Inquiry officers asked closed-ended questions without adequate follow-up.”⁵⁷ The report further stated that Service

⁵⁷ Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations*, p. 2.

complaint procedures should adhere to standards that will assure Service members that their complaints are being handled fairly by trained, impartial personnel. The basic purposes of discrimination complaint investigations is to collect documentary, testimonial, or statistical evidence concerning each allegation made by the complainant, to assess such evidence and to determine if there is sufficient information to substantiate each allegation. The investigator is a neutral fact-finder. Under no circumstances is the investigator to act as a coach or an advocate for either the accused or the accuser.

The DoD IG's report prompted the Services to improve their military equal opportunity programs and discrimination complaint processes. For example, the Navy and Marine Corps have developed handbooks and guides which explain how to conduct investigations of allegations of sexual harassment. The Army restructured its complaint investigations to include mandatory coordination and review of investigations by EO advisors, and the Air Force improved coordination between EO and IG offices on formal investigations.

Recommendation

35. The Services should adopt standards for conduct of complaint investigations that draw upon the criteria outlined by the DoD Inspector General.⁵⁸

Legal Review

The current DoD Directive on military Equal Opportunity programs does not address the necessity for a legal review of formal discrimination complaints, although in practice most commanders incorporate such a procedure at different stages in the investigative process.

Given the wide range of prohibited behaviors and possible sanctions/penalties in discrimination cases, commanders would be well advised to seek legal counsel prior to issuing final decisions in such cases or imposing sanctions. The purposes of a review by legal counsel are to determine if an investigation adequately addresses the complaint; if the investigative procedures and case file comply with all applicable legal and administrative requirements; if the evidence gathered is sufficient to support the findings of the investigation; if the conclusions of the investigating officers are consistent with the finding; and if any errors or irregularities exist.

A legal review of formal discrimination complaints is also desirable because of the differences in the standards of proof required for administrative, as opposed to judicial, findings. Administrative findings need only be supported by a "preponderance of evidence" -- the evidence presented or gathered is more credible than countervailing input.

Recommendation

⁵⁸ See "EO Investigation Review Criteria," Appendix 1 of Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations*, attached to this report at Appendix 10.

36. DoD Directive 1350.2 should be revised to require that all formal discrimination complaint cases are reviewed for legal sufficiency before final action is taken and before the complaint is closed.

Consistent Sanctions

All of the Services provide a full range of administrative and disciplinary sanctions for use by commanders in resolving instances of sexual harassment or other forms of discrimination. As a matter of Service policy, commanders are expected to take prompt and appropriate action; however, the decision as to which sanctions, if any, to invoke in a particular case is left to the discretion of the unit commander. In at least two instances, though, the Services have designated certain minimum responses. The Secretary of the Navy requires that Navy or Marine Corps members found to have committed *quid pro quo* type sexual harassment, or battery, be processed for administrative separation. The Army requires that offenders in all substantiated complaints undergo counseling by a member of the chain of command, preferably the commander.

The DoD IG's report found that 56% of investigations in which complaints were fully or partially substantiated resulted in nonpunitive actions, such as a letter of reprimand. In 24% of these substantiated cases, commanders administered nonjudicial punishment under the UCMJ. The report continues to say that, "The data indicated that substantiated cases in the Army and the Air Force were more likely to result in administrative actions while substantiated cases in the Navy more often resulted in nonjudicial punishment under the UCMJ."⁵⁹

There are three basic options available to commanders in discrimination complaint cases:

- Dismiss the action as unfounded. When a complaint has been determined to be unsubstantiated after adequate investigation, it is appropriate to take no action against an alleged offender. On the other hand, the investigation may uncover facts that the commander may wish to use as a basis of counseling.
- Take administrative action. There are a number of possible administrative sanctions that a commander can impose, ranging from counseling to administrative separation, depending upon the nature and severity of the confirmed offense. The measures are not mutually exclusive and two or more may be imposed concurrently, if deemed appropriate by the commander.
- Disciplinary action under the Uniform Code of Military Justice (UCMJ). Disciplinary action under the UCMJ may be either non-judicial (e.g., administrative punishment imposed for minor offenses) or judicial (e.g., court martial proceedings). Non-judicial punishments can vary based upon the grade/rank of the offender, as well as the grade/rank/position of the officer imposing the punishment. Penalties can range from a punitive admonition or reprimand to correctional custody of enlisted people for up to 30 days or arrest in quarters of officers for up to 30 days. There are

⁵⁹ Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations*, p. 3 (Appendix 10).

three types of courts-martial: summary, special and general. The type selected depends upon the status of the accused (e.g., enlisted or officer) and/or the nature of the offense and its severity. Punishment can range from a punitive reprimand to confinement to a punitive discharge.

There are numerous articles or sub-articles of the UCMJ which can be used to cover behavior which can be considered sexual harassment. A list of some sexually harassing behavior, with correlating UCMJ articles, is at Appendix 9. As the Services downsize, any adverse action resulting from a substantiated allegation of discrimination will materially affect a Service member's ability to remain on active duty. That is, such an action could result in denial of promotion or reenlistment, or separation from the Service. Given the wide range of behaviors which constitute discrimination (including sex discrimination and sexual harassment) and the variety of official responses/sanctions, it does not appear to be desirable or feasible to develop a DoD-wide standard table of penalties for specified offenses, as is used by the courts in Federal drug cases.⁶⁰

Recommendation

37. The Services should ensure that commanders and their military legal counsels are fully cognizant of the range of prohibited behaviors and the range of possible sanctions.⁶¹

Feedback and Follow-up

The complainant and respondent must be periodically advised of the progress being made on the complaint. Such feedback will assure the complainant that actions are being taken to resolve the complaint and will alleviate tension that could damage morale and readiness. The DoD IG found that, "Feedback to complainants regarding the outcome of the investigation into their complaint was documented in 65 percent of all cases reviewed, and follow-up to measure the effectiveness of corrective action taken or to detect and deter reprisal was documented in 6 percent."⁶²

The Services' regulations for processing discrimination complaints require that the commander, appointed investigator, or EO advisor provide feedback to the complainant regarding the outcome of an investigation. The Army, Air Force, and Navy complaint forms include the requirement for feedback to the complainant.⁶³ The feedback section includes a summary of investigations and actions taken to resolve the conflict. Copies of the completed complaint form are given to the complainant.

Corrective actions in discrimination cases might not always be fully implemented, and reprisal against a complainant may occur months after filing a complaint. Documented follow-

⁶⁰ See related appendices 7 and 8.

⁶¹ See recommendation above (18) on professional military education.

⁶² Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations*, p. 3 (Appendix 10).

⁶³ In December 1994, the Navy adopted a similar requirement.

up with the complainant 60 to 90 days after a discrimination case is closed would ensure that there is satisfaction with the case resolution and that there has been no reprisal.

Recommendations

38. OSD should establish a policy which requires the Services to ensure timely and periodic feedback to complainants and respondents regarding the status and outcome of complaints. DoD Directive 1350.2 should be revised to specify the types of records releasable to victims of proven discrimination. The revised Directive should also specify what general information concerning sanctions, if any, should be released to complainants. Feedback on the outcome of the complainant's allegations should be as complete as possible, consistent with the limitations of the Freedom of Information Act and The Privacy Act.
39. The Services should document each formal complainant's satisfaction with the complaint process (i.e., timeliness, staff responsiveness and helpfulness, and the outcome of their complaint). Such follow-up should occur not later than 90 days after a discrimination case is closed.

Confidentiality of Records and Documentation

Discrimination complaint files often contain sensitive, personal information. The release of such information is, of course, subject to the provisions of The Privacy Act and The Freedom of Information Act (FOIA).⁶⁴ Under FOIA, all records of agencies of the Federal Government must be accessible to the public unless specifically exempted by law. However, under these statutes, an agency is prohibited from releasing records whose disclosure would be a clearly unwarranted invasion of personal privacy. This requires a balancing between the interests of the subject of the information in preserving its privacy and the public interest in disclosure.

A balance must be struck which acknowledges, first, the need of the complainant to be assured that his or her complaint was thoroughly and objectively reviewed and, if substantiated, that corrective action has been taken to prevent recurrence; and second, the need of the subject to be protected from release of unsubstantiated allegations of misconduct. In the case of substantiated complaints, release of an appropriately redacted copy of the investigative report or a summary of the report would build support for and confidence in the complaints process. When the allegations are found to be unsubstantiated, we believe that release of the report constitutes an unwarranted invasion of the privacy of the subject. Release of administrative reports containing unsubstantiated allegations has significant potential for damaging the reputation of persons unfairly or incorrectly accused of wrongdoing.

The releasability of records is also affected by the kind of sanction issued. Court-martial records are public and generally releasable except for classified or privileged material. Administrative actions such as letters of reprimand or admonishment are not generally releasable.

⁶⁴ 5 U.S.C. § 552 (1988).

Recommendation

40. The Services should provide complainants copies of completed complaint forms. In substantiated cases, the Services should normally release redacted copies or summaries of the investigative reports.

Appeals

Current review procedures vary by Service but generally follow the chain of command or Service IG channels. Decisions in the Army can be appealed to the next higher level of command. In the Air Force, complainants dissatisfied with the chain-of-command decision may complain to the Service IG. In the past, the Navy and Marine Corps have used Article 138, UCMJ, as the appeal channel from chain-of-command decisions. The Coast Guard has no established appeal or review procedures, but formal complaints are decided in the first instance by DOT's Office of Civil Rights.

There is considerable Congressional and public interest in ensuring that there is an effective appeal process. In Section 531 of the FY 95 Defense Authorization Act Conference Report, the Congress calls for the Secretary of Defense and the Secretary of Transportation to prescribe regulations that include a process for appeal and review of investigative findings.⁶⁵

We believe that a final appeal procedure should be established at the level of the Service Secretary for the purpose of appealing findings (as distinct from appealing actions taken as a result of findings). The Military Services should tailor appeal procedures to the needs of their components, so long as the common denominators of thoroughness, objectivity, and equality of treatment are provided in service regulations approved by OSD. We believe that both the complainant and the subject of the complaint should have the right to appeal administrative findings of discrimination or no discrimination. An appeal procedure should not be an adversarial process, nor does it require personal appearances or hearing rights. On the basis of the written record and arguments submitted with the appeal, the Secretary or designated official would sustain or overrule the finding below or remand the matter for further fact finding. To avoid delaying or impeding the prompt and effective resolution of administrative complaints, commanders should not withhold appropriate administrative or disciplinary actions while a Secretarial-level appeal is pending. When a commander initiates, or has previously initiated, either a nonjudicial or judicial action under the UCMJ, that action shall take precedence over any ongoing or contemplated administrative actions or their review. In such circumstances, the UCMJ appellate processes are the exclusive appellate mechanisms available.

In addition to these procedures, the Service Boards for the Correction of Military/Naval Records may afford a remedy for both complainants and subjects of complaints, through the correction of errors or injustices appearing in their military records. Similarly, both complainants

⁶⁵ U.S. Congress, House of Representatives, *National Defense Authorization Act for Fiscal Year 1995: Conference Report*, pp. 97-99. On the review of investigatory findings, see discussion of FOIA above.

and subjects of complaints may invoke Article 138 as permitted by Service implementing regulations to remedy wrongs by their commanders, and may, without restriction, present their grievances to Service Secretaries, Service IGs and the DoD IG.

Recommendation

41. DoD Directive 1350.2 should be revised to establish criteria for the appeal of the findings of formal, administrative discrimination and sexual harassment complaints. The sole mechanism for appealing the disposition of an informal complaint should be to file a formal complaint. In general, the first appeal of a decision on a formal complaint should be to an installation-level commander or, in the case of personnel not assigned to an installation (e.g., on ships), to the first commander in the chain with general court martial convening authority. Subsequent and final appeal procedures should be established within each Service at the level of the Service Secretary.

Support Services

Making the victim "whole" is a key objective in resolving discrimination complaint cases. In some cases, the answer is to correct military records affected by a retaliating supervisor. In sexual harassment cases, in particular, counseling and other support services can help complainants cope with the trauma sometimes caused by the harassment. Access to counseling and other personnel resources can help overcome disruptions to careers caused by incidents of discrimination and harassment. Congress has required the Department of Defense to establish a victims' advocates program within its Equal Opportunity programs.⁶⁶

Recommendation

42. Victims' support programs should provide information on services and assistance in obtaining them. The Services should ensure that programs for counseling, information, referral, and other assistance are made available to Service members who have experienced discrimination or sexual harassment. Assistance counselors should be located at a central location at each installation and should have available a directory of support services available in the unit or on the installation.

⁶⁶ The Congressional requirement is at Section 534 of the FY 95 National Defense Authorization Act Conference Report. U.S. Congress, House of Representatives, *National Defense Authorization Act for Fiscal Year 1995: Conference Report*, pp. 101-102.

C. NATIONAL GUARD AND RESERVE PROGRAMS

The National Guard Equal Opportunity (EO) program has evolved over the thirty-year period following enactment of the Civil Rights Act of 1964. Title VI of the Civil Rights Act prohibits discrimination based on race, color, or national origin under any program or activity receiving Federal financial assistance. The law does not prohibit sex discrimination. The law provides for withholding or terminating Federal funds from the States if documented discrimination is not corrected. This is one distinctive feature of the National Guard program and adds an extra dimension to the responsibilities of the program managers.⁶⁷

The National Guard Military EO program, however, applies to all members of the National Guard not in Federal service, applicants for military membership in the Guard, and beneficiaries of National Guard services. The system includes all forms of prohibited discrimination, including sexual harassment and reprisal.

A second distinctive feature of the National Guard program is that command channels for National Guard members not in Federal service are through State authority. The State Commander, the Adjutant General, reports to the Governor and may be a member of the Army or the Air Force. Thus, the National Guard Bureau is a joint activity which operates an EO program and discrimination complaints system affecting both the Army and Air National Guard. The National Guard Bureau system reflects the unique state and Federal role of the National Guard -- operating under state command authority in peacetime and meeting the standards and policies of the Department of Defense and the Military Departments at all times.

The National Guard discrimination complaints system is spelled out in detail in a joint Army/Air National Guard Bureau regulation. It provides a system which is chain-of-command based, but which allows a complaint to progress upward at the will of the complainant. If unresolved at the state level, the complaint progresses to the National Guard Bureau for review and final decision. Under Title VI, the National Guard Bureau, as conduit of Federal funds to the states, must maintain final review or decision authority over discrimination complaints.

The National Guard system provides for resolution of complaints at the lowest level through informal mechanisms: mediation and other forms of alternate dispute resolution are available and encouraged. Feedback is provided to the complainant and required corrective action emphasizes making the victim of discrimination "whole." Disciplinary or punitive action is referred for command action. The National Guard Bureau has published extensive procedural instructions and training materials to aid the states in their management of the program at state level. Equal Opportunity program managers supporting the National Guard program are trained by the Defense Equal Opportunity Management Institute.

The Army, Navy, Air Force, and Marine Corps Reserves are similar to, yet distinct from, their active-duty counterparts. We noted some obvious and some not-so-obvious differences between the active duty and Reserve settings that can affect the nature and effectiveness of sexual harassment and discrimination programs. For instance, violations of standards and

⁶⁷ The Military Services, as part of the Federal Government, are not subject to Title VI.

instances of reprisal may occur across a combination of military and civilian statuses. The majority of the members of the National Guard and Reserve are in a military status on a part-time basis. Some serve in a full-time status in support of the training, administration and readiness of the National Guard and Reserve. In the Reserve components of the Army and the Air Force, more than 60,000 military technicians serve in a dual military and Federal civilian employee status, with their full-time civilian job supporting the Guard and Reserve contingent upon their membership in a compatible military billet in the unit they support. Most technicians wear the military uniform throughout the week when they are civilians. Guard and Reserve technicians, when they are performing duties as civilians, are governed by laws and regulations applying to civilian employees. The common link is that all are military members.

We concluded that a "Full-time values -- part-time careers" perspective is required. Off-duty or non-duty behavior that impacts on the military workplace must be covered by discrimination and sexual harassment prevention programs in the National Guard and Reserve -- as it is in the active components. We also concluded that adequate support of Reserve programs requires complaint forms and reporting systems that clearly identify the duty status involved in Reserve cases. Similarly counselors, helpline personnel, and investigators must have adequate training so they are able to address Reserve component situations.

Our previous recommendations apply to the National Guard (recognizing its distinctive features as discussed above) and Reserves, subject to the following qualifications. In formulating these recommendations, we recognized that many reservists only have contact with their unit during one weekend a month. Further, we noted that reservists serve in their hometowns and therefore tend to serve together over a longer period of time than their active-duty counterparts; therefore reprisal may be more of a concern in the Reserves.

Recommendations

43. In setting timelines for both the reporting and the investigation of complaints in the Reserve components, the Services should take drilling periods into account.
44. In order to deal effectively with reprisals, follow-up on harassment and discrimination cases in the National Guard and Reserve should extend through a minimum period of one year following conflict resolution.
45. Because the National Guard Bureau Equal Opportunity program has many distinctive features stemming from statutory differences and unique organizational considerations, a separate National Guard program, fully consistent with the broader Department of Defense program objectives, should be maintained.
46. In the case of members of the National Guard and Reserve who are not serving in a full-time duty status, off-duty or non-duty behavior that affects the military workplace must be covered by discrimination and sexual harassment prevention programs in the National Guard and Reserve.

D. JOINT ORGANIZATIONS AND DEFENSE AGENCIES

Our goals for EO programs -- unit effectiveness and fairness to individuals -- apply to all DoD organizations where military personnel are assigned. This includes joint commands and task forces, Defense Agencies and field activities, and the Office of the Secretary of Defense. These organizations include Service members from each Military Department, DoD civilian employees, and the Coast Guard. In joint organizations and Defense Agencies, the procedures for processing and resolving discrimination and sexual harassment complaints may be different from complaint processing procedures and resolution in the Military Departments.

The principles enumerated in this report -- command commitment and accountability; service distinctiveness; clarity of policy; effective training; and prompt, thorough and fair complaints handling -- apply for effective EO complaint systems in joint organizations and task forces, Defense Agencies and field activities, and the Office of the Secretary of Defense. Our recommendations apply to these organizations also, except in cases where they would have to duplicate Service programs or reporting requirements. Our report would be incomplete if we did not address the procedures for processing discrimination and sexual harassment complaints in joint organizations and Defense Agencies.

Findings and Recommendations

Joint organizations and Defense Agencies have procedures for processing discrimination and sexual harassment complaints received from military members assigned to their organizations. The first step -- using the chain of command to resolve complaints at the lowest appropriate level -- parallels the first step in the complaint process for the Military Departments. In the Military Departments, if a complaint cannot be resolved within the chain of command, the complainant files a formal complaint through IG, EO, or UCMJ (Article 138) channels. However, procedures may vary among joint organizations and Defense Agencies for handling complaints that cannot be resolved through the chain of command.

Further contrast between joint organizations and Defense Agencies and the Military Departments may exist when complaint disposition requires judicial or non-judicial action. Commanders of joint organizations and directors of Defense Agencies may not be authorized to administer judicial or non-judicial punishment or to take administrative separation action for assigned military personnel.⁶⁸ Commanders of joint organizations and directors of Defense Agencies refer substantiated complaints that require judicial or non-judicial punishment or initiation of administrative separation action to the Service command element for the appropriate action. In some instances, the respondent is reassigned from the joint organization or Defense Agency to the parent Service to facilitate the process.

Joint Organizations

⁶⁸ This is true for all violations of the UCMJ and not only in cases of substantiated complaints of discrimination or sexual harassment.

If the matter cannot be resolved through the chain of command, personnel assigned to joint commands file complaints according to command-unique guidelines. For example, Joint Staff personnel may file a discrimination or sexual harassment complaint through the Joint Staff Inspector General's office. The inspector general gathers the facts and, if warranted, conducts a formal investigation. The procedures are published in Joint Administrative Instruction, 1150.01A, "The Joint Staff Military Equal Opportunity Program."

United States Central Command (CENTCOM) has also established detailed procedures which are published in CENTCOM Regulation 600-16, "Equal Opportunity and Sexual Harassment Policy." The CENTCOM regulation encourages resolution through informal means at the lowest appropriate level while providing guidance for complaint processing through formal channels. The first step in the process is validation through EO channels to determine the need for a formal investigation. If a formal investigation is appropriate, an investigating officer is appointed and is also charged with ensuring that all interested parties are kept abreast of the procedures and requirements through completion of the investigation. Once the investigation is complete and prior to final disposition of the case, the investigating officer forwards the findings through the appropriate channels for review. If disciplinary or administrative action is required beyond that which is available within the joint organization, the results of the investigation will be forwarded to the appropriate Service for action. If disposition results in adverse action, a legal review is required.

Defense Agencies

Some Defense Agencies have not encountered complaints of discrimination or sexual harassment from military personnel. Those agencies are beginning to develop specific procedures for processing military discrimination and sexual harassment complaints. Procedures vary when matters cannot be resolved informally through the chain of command. The Defense Commissary Agency, Defense Information Systems Agency, Defense Mapping Agency, Department of Defense Inspector General, National Security Agency, and Washington Headquarters Service refer Service members to their respective Service EO offices to file formal complaints. The Army & Air Force Exchange Service, Defense Finance and Accounting Service, Defense Intelligence Agency, Defense Nuclear Agency, and the Uniformed Services University of the Health Sciences refer Service members to the agency EEO office, agency inspector general, or an EO advisor assigned to the agency to file formal complaints.

After the complaint is filed, the process is generally the same in all agencies. However, the structure to carry out the process varies greatly. The Service EO office, agency EEO office, inspector general or agency EO advisor gathers the facts. If the facts are complete enough, the agency director makes a decision, resolves the case, and issues administrative sanctions as appropriate. If the facts indicate a UCMJ violation, the director appoints an investigator and the agency general counsel reviews the findings of the investigation. If the allegations are unsubstantiated, the complaint is informed of the outcome and right of appeal. If the allegations are substantiated, the agency director refers the case to the Service command element for judicial or non-judicial action or administrative separation action as appropriate.

Recommendations

47. Commanders of joint organizations and directors of Defense Agencies should be responsible for equal opportunity within their jurisdictions. Because such activity heads do not generally exercise career management or UCMJ authority over assigned military personnel, special consideration must be exercised in meeting DoD EO standards. At a minimum, those commanders and directors must ensure that all DoD policies and programs are understood and executed throughout their organizations. Commanders of joint organizations and directors of Defense Agencies are responsible for:
 - Establishing EO programs that comply with DoD guidelines and reflect the standards, values and principles of existing Service programs, resources, and counseling services. Commanders and agency directors should be aware that some Service members may be aware of or comfortable only with their parent Services' complaint system. These individuals should not be denied the benefit of their parent Services' EO and counseling systems if necessary to ensure the DoD standards on complaint handling are met.
 - Appointing an EO advisor who will initiate the administrative process and prepare initial reports for the commander's or director's review and disposition. Generally, these positions need not be full-time, but incumbents should receive DEOMI-approved training that enables them to administer a responsive EO program.
 - Establishing and publishing discrimination and sexual harassment complaint and appeal procedures that comply with earlier recommendations in this report. Appeal procedures should provide for referral to appropriate general courts martial convening authority. Subsequent and final appeal should be made at the level of the respondent's or complainant's Service Secretary. To the extent commanders and agency heads rely on the installation host Service to provide complaint processing, investigation support, counseling and referral services, these relationships should be formally established and published.
48. Commanders of joint organizations and directors of Defense Agencies should take corrective actions and issue administrative sanctions, as appropriate, in all cases of substantiated complaints of discrimination and sexual harassment within their organizations or agencies. Only those substantiated complaints of discrimination and sexual harassment that require judicial or non-judicial punishment should be referred to the installation host Service or Service command element for disposition.

E. APPENDICES

1. Secretary of Defense memorandum, "Equal Opportunity (EO)," March 3, 1994.
2. Secretary of the Air Force and Under Secretary of Defense (Personnel and Readiness) joint memorandum for the Deputy Secretary of Defense, "Sexual Harassment Policy Plan," April 25, 1994.
3. DoD Human Goals Charter
4. Discrimination and Sexual Harassment Prevention Program Analysis Matrix
5. Table Comparing Definitions of Key EO Terms
6. Secretary of Defense memorandum, "Prohibition of Sexual Harassment in the Department of Defense (DoD)," August 22, 1994.
7. Administrative Measures for Correcting Military Offenders
8. Comparison of UCMJ Forums
9. Charging Sexual Harassment and Other Discrimination Under the UCMJ
10. Assistant Inspector General for Departmental Inquiries, *Review of Military Department Investigations of Allegations of Discrimination by Military Personnel* (Washington, D.C.: Department of Defense Inspector General: March 1994).
11. Suggested Timelines for Complaints Investigations

**Secretary of Defense memorandum, "Equal Opportunity
(EO)," March 3, 1994**

Tab 1



THE SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1000

3 MAR 1994

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMPTROLLER OF THE DEPARTMENT OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR OF ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Equal Opportunity (EO)

Our nation's security and prosperity depend on our ability to develop and employ the talents of our diverse population. Equal opportunity is not just the right thing to do, it is also a military and an economic necessity. Most importantly, all employees of this Department have a right to carry out their jobs without discrimination or harassment. As the Secretary, I have a fundamental responsibility to ensure all of our employees enjoy this basic right. Therefore, I will not tolerate discrimination or harassment of or by any Department of Defense employee.

The Military Services have led our nation in expanding opportunities for minority groups. The Services also have made great strides towards integrating women into the force; and the Department has done well in employing persons with disabilities. However, I believe we can and should do better on all fronts. This memorandum describes, in general terms, the measures taken, or that need to be taken, in order to build on our past successes.

First, I have established an office of Deputy Assistant Secretary of Defense for Equal Opportunity as a focal point for military and civilian EO programs.

Second, I have decided to restructure the Department's Defense Equal Opportunity Council (DEOC) to emphasize management accountability. The DEOC will be chaired by the Deputy Secretary of Defense; its membership will include the Service Secretaries, the Under Secretaries of Defense, the Director, Administration and Management/Washington Headquarters Services, and other members of OSD's senior management team. The USD(P&R) will provide the executive secretary for the group and will oversee Department-wide initiatives.

Third, I have asked the Under Secretary of Defense (Personnel and Readiness) to lead a major study of the officer "pipeline," and, where necessary, to recommend ways to improve the flow of minority and female officers from recruitment through general and flag officer ranks.

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Fourth, I am asking your support for a vigorous, sustained effort to improve the representation of women, minorities, and people with disabilities among this Department's civilian managers. This should include greater use of career development programs and broader, more intensive recruitment.

Fifth, I want all the Department's personnel to receive equal opportunity training. It is especially important for leaders to understand their responsibilities. Therefore, I have asked the Defense Equal Opportunity Management Institute to develop special seminars and briefings for senior civilian and military leaders, including a mandatory two-day program for all new O-7s and all new members of the Senior Executive Service.

More information about these measures will be forthcoming. I request your unwavering support for these efforts.

William J. Perry

**Secretary of the Air Force and Under Secretary of Defense
(Personnel and Readiness) joint memorandum for the Deputy
Secretary of Defense, "Sexual Harassment Policy Plan,"
April 25, 1994**

Tab 2



SECRETARY OF THE AIR FORCE
WASHINGTON

APR 25 1994

MEMORANDUM FOR THE DEPUTY SECRETARY OF DEFENSE

Subject: Sexual Harassment Policy Plan

In your memo of March 15, 1994, you asked us to develop a sexual harassment policy action plan. The plan we have developed incorporates several initiatives and is rooted in our firm commitment to eradicating both discrimination and sexual harassment in the Department of Defense.

Secretary Perry stated in his Equal Opportunity memorandum of March 3 that "all employees of this Department have a right to carry out their jobs without discrimination or harassment." Our broad goal, when dealing with issues of discrimination and harassment, is to ensure that we create and maintain a work environment where all of our employees can excel. In the military services, we must make the Chain of Command work *for* service members and *against* discrimination in the military.

Our plan has five main elements. We will:

- Work with Congress toward our mutual goal of eliminating discrimination from the Department of Defense. Specifically, we will soon send the HASC our after action reports on the sexual harassment cases highlighted in the March 9 hearing. On April 20, Under Secretary Dorn sent a letter to Chairman Dellums reviewing lessons learned in anticipation of the individual Services' reports. We will also continue to cooperate with the HASC Task Force on Equality of Treatment and Opportunity in the Armed Forces.
- Formulate a new sexual harassment policy statement. This policy statement is now under review and will be ready for SecDef signature on May 15.
- Establish the DEOC Task Force on Discrimination and Sexual Harassment to review the military services' discrimination complaints system and recommend improvements, including the adoption of Department-wide standards.
- Initiate a new sexual harassment survey to ascertain whether service members have confidence in the current system.
- Implement senior leadership training at the Defense Equal Opportunity Management Institute. This training will include workshops on ending discrimination and sexual harassment.

Clearly, the bulk of our remaining work will be as co-chairs of this DEOC Task Force. The purpose of this Task Force is to make recommendations to you through the DEOC on standards and other improvements in the military services discrimination complaints processing systems. We envision a series of about ten briefings from the individual Services. These will include issues such as the training of complaint handlers, commanders and supervisors; the conduct of investigations; support services for victims; procedures for the prevention of reprisals; and procedures for reporting the results of investigations. The process is designed to enhance the involvement of the individual Services in contributing to the work of the Task Force. The Task Force will conclude its work with a summary report of its findings and recommendations, to be presented to the DEOC by August 1, 1994.



Sheila Widnall
Secretary of the Air Force



Edwin Dorn
Under Secretary of Defense
for Personnel and Readiness

DoD Human Goals Charter

Tab 3



Department of Defense HUMAN GOALS

OUR Nation was founded on the principle that the individual has infinite dignity and worth. The Department of Defense, which exists to keep the Nation secure and at peace, must always be guided by this principle. In all that we do, we must show respect for the serviceman, the servicewoman, the civilian employee, and family members, recognizing their individual needs, aspirations, and capabilities.

The defense of the Nation requires a well-trained volunteer force, military and civilian, regular and reserve. To provide such a force, we must increase the attractiveness of a career in the Department of Defense so that service members and civilian employees will feel the highest pride in themselves, their work, their organization, and their profession.

THE ATTAINMENT OF THESE GOALS REQUIRES THAT WE STRIVE

TO attract to the Department of Defense people with ability, dedication, and capacity for growth;

TO provide opportunity for everyone, military and civilian, to rise to as high a level of responsibility as possible, dependent only on individual talent and diligence;

TO assure that equal opportunity programs are an integral part of readiness;

TO make military and civilian service in the Department of Defense a model of equal opportunity for all regardless of race, color, sex, religion, or national origin;

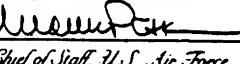
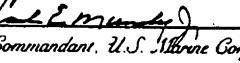
TO provide equity in civilian employment for older persons and individuals with disabilities and to provide an environment that is accessible to and usable by all;

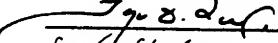
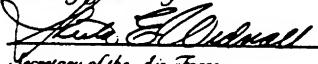
TO hold those who do business with or receive assistance from the Department to full compliance with its equal opportunity policies;

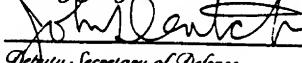
TO help each service member in leaving the service to readjust to civilian life;

TO create an environment that values diversity and fosters mutual respect and cooperation among all persons; and

TO contribute to the improvement of our society, including its disadvantaged members, by greater utilization of our human and physical resources while maintaining full effectiveness in the performance of our primary mission.


Chief of Staff, U.S. Army
J.M. Boorda
Chief of Naval Operations

Chief of Staff, U.S. Air Force

Commandant, U.S. Marine Corps


Secretary of the Army
John H. Dalton
Secretary of the Navy

Secretary of the Air Force


Secretary of Defense

Deputy Secretary of Defense

Chairman, Joint Chiefs of Staff

**Discrimination and Sexual Harassment Prevention Program
Analysis Matrix**

Tab 4

Discrimination & Sexual Harassment Program Analysis

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
1. Formal Complaint System	<ul style="list-style-type: none"> - Complaint: Request Mast preferred method - Article 138, Uniform Code of Military Justice (UCMJ) Complaint - US Navy Regulations (NAVREGS), Article 1150 - Communication with Inspector General (IG) - Communication with Congress 	<ul style="list-style-type: none"> - Complaint: Written complaint - Remedy by complainant - Timelines for key actions * - mandatory written feedback to complainant -- results of investigation -- actions to resolve - Swear to complaint - Victim oriented appeals process - Follow up assessment - Multiple agencies to file - Communication with Inspector General (IG) - Communication with Congress 	<ul style="list-style-type: none"> - Complaint: Written complaint - Remedy by complainant - Timelines for key actions * - mandatory written feedback to complainant -- results of investigation -- actions to resolve - Swear to complaint - Victim oriented appeals process * - Follow up assessment - Multiple agencies to file - Communication with Inspector General (IG) - Communication with Congress 	<ul style="list-style-type: none"> - Complaint: Written complaint - Remedy by complainant - Timelines for key actions * - mandatory written feedback to complainant -- results of investigation -- actions to resolve - Swear to complaint - Victim oriented appeals process - Follow up assessment - Multiple agencies to file - Communication with Inspector General (IG) - Communication with Congress 	<ul style="list-style-type: none"> - Complaint: Written complaint - Remedy by complainant - Timelines for key actions * - mandatory written feedback to complainant -- results of investigation -- actions to resolve - Swear to complaint - Victim oriented appeals process - Follow up assessment - Multiple agencies to file - Communication with Inspector General (IG) - Communication with Congress 	<ul style="list-style-type: none"> - National Guard unique system - Joint - Army and Air National Guard. Incorporate Title VI and DoD policy - National Guard Regulation NGR 600-22/ANGR 30-3
Process: CO appoints an investigative officer, as needed	Process: CO Inquiry or CO appoints an investigative officer	Process: CO Inquiry or CO appoints an investigative officer	Process: Vice Wing Commander (IG) has 2 phase process (1) Clarification by Social Actions and (2) IG Investigation *			

*These program elements were added to Service Discrimination and Sexual Harassment Prevention Programs in Calendar Year 1994, the year the Defense Equal Opportunity Council Task Force on Discrimination and Sexual Harassment was established.

**Discrimination & Sexual Harassment
Program Analysis**

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
2. Informal Resolution System	<p>Informal Resolution System (IRS):</p> <ul style="list-style-type: none"> - Confront harasser - Write letter to harasser - Use intermediary - Request Training - Maintain a log or diary <p>Informal complaints:</p> <ul style="list-style-type: none"> - unwritten - Designed to get behavior to stop and resolve conflict at lowest possible level - Not reported - Not documented 	<p>Informal Resolution System:</p> <ul style="list-style-type: none"> - Confront harasser - Write letter to harasser - Use intermediary - Request Training - Maintain a log or diary <p>Informal complaints:</p> <ul style="list-style-type: none"> - unwritten - Designed to get behavior to stop and resolve conflict at lowest possible level - Not reported - Not documented 	<p>Informal Resolution System:</p> <ul style="list-style-type: none"> - Confront harasser - Write letter to harasser - Use intermediary - Request Training - Maintain a log or diary <p>Informal complaints:</p> <ul style="list-style-type: none"> - unwritten - Designed to get behavior to stop and resolve conflict at lowest possible level - Not reported - Not documented 	<p>Informal Resolution System:</p> <ul style="list-style-type: none"> - Confront harasser - Write letter to harasser - Use intermediary - Request Training - Maintain a log or diary <p>Informal complaints:</p> <ul style="list-style-type: none"> - unwritten - Designed to get behavior to stop and resolve conflict at lowest possible level - Not reported - Not documented 	<p>Informal Resolution System:</p> <ul style="list-style-type: none"> - Confront harasser - Write letter to harasser - Use intermediary - Request Training - Maintain a log or diary <p>Informal complaints:</p> <ul style="list-style-type: none"> - unwritten - Designed to get behavior to stop and resolve conflict at lowest possible level - Not reported - Not documented 	<p>- Initial steps of complaint system - chain of command or Equal Opportunity (EO) Officer</p> <p>- Mediation available via State mediators or NRG Regional Personnel Centers</p>

**Discrimination & Sexual Harassment
Program Analysis**

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
3. Complaint Channels	<ul style="list-style-type: none"> - Any level of the Chain of Command - Equal Opportunity Advisor/Specialist - Senior Enlisted Advisor - Chaplain - Legal (Staff Judge Advocate) - Military Police - Criminal Investigator - Housing Referral Office - Medical - Inspector General - DoD Inspector General - Congress/High Level 	<ul style="list-style-type: none"> - Any level of the Chain of Command - Equal Opportunity Advisor/Specialist - Senior Enlisted Advisor - Chaplain - Legal (Staff Judge Advocate) - Military Police - Criminal Investigator - Housing Referral Office - Medical - Inspector General - DoD Inspector General - Congress/High Level 	<ul style="list-style-type: none"> - Any level of the Chain of Command - Equal Opportunity Advisor/Specialist - Senior Enlisted Advisor - Chaplain - Legal (Staff Judge Advocate) - Military Police - Criminal Investigator - Housing Referral Office - Medical - Inspector General - DoD Inspector General - Congress/High Level 	<ul style="list-style-type: none"> - Any level of the Chain of Command - Equal Opportunity Advisor/Specialist - Senior Enlisted Advisor - Chaplain - Legal (Staff Judge Advocate) - Military Police - Criminal Investigator - Housing Referral Office - Medical - Inspector General - DoD Inspector General - Congress/High Level 	<ul style="list-style-type: none"> - Any level of the Chain of Command - Equal Opportunity Advisor/Specialist - Senior Enlisted Advisor - Chaplain - Legal (Staff Judge Advocate) - Military Police - Criminal Investigator - Housing Referral Office - Medical - Inspector General - DoD Inspector General - Congress/High Level 	<ul style="list-style-type: none"> - Chain of command channel - Filed with immediate Commander - Proceed through intermediate commanders - Investigation/Resolution by State Adjutant General (AG) - Unresolved to National Guard Bureau (NGB) for review/decision
4. Resolution Timelines	<p>To file: 60 days</p> <p>To Refer: 1-3 days</p> <p>Feedback to complainant: upon resolution of complaint, and as necessary</p> <p>Appeal: * - If not satisfied at request mast, complainant may proceed to next level</p> <p>- complete investigation within 30 days</p> <p>- One extension of 30 days must be approved by CG</p> <p>- Updates provided every 14 days</p>	<p>To file: 45 days * (longer w/ CO discretion)</p> <p>To Refer: 1 day</p> <p>Feedback to complainant: same day investigation starts, upon resolution of complaint, and as necessary*</p> <p>Appeal: * - Complainant has 7 days to file an appeal</p> <p>- Appeal authority has 4 days to act on an appeal and inform complainant on final action</p>	<p>To file: 60 days</p> <p>To Refer: 3 day</p> <p>Feedback to complainant: every 14 days, at conclusion of the investigation, and as required</p> <p>Appeal: * - Complainant has 7 days to file an appeal</p> <p>- Appeal authority has 4 days to act on an appeal and inform complainant on final action</p>	<p>To file: 6 months</p> <p>To Refer: ASAP</p> <p>Feedback to complainant: every 5 work days or as required and at conclusion of the investigation</p> <p>Appeal: * - No time limit</p>	<p>To file: 60 days</p> <p>To refer: 15 days</p> <p>Feedback to complainant: every 5 work days or as required and at conclusion of the investigation</p> <p>Appeal: * - 15 days</p>	<p>To file: 180 days</p> <p>- 60 days - Immediate commander action</p> <p>- 30 days - Complainant decides to pursue is next higher commander</p> <p>- 30 days - Intermediate commander action</p> <p>- 90 days - State AG action (Investigation Resolution)</p> <p>- 1 year (from date of filing) - NGB review/initial decision</p>
	<p>Follow-up: 30-45 days following final decision on complaint*</p>	<p>Follow-up: 30-45 days following final decision on complaint*</p>	<p>Follow-up: 30 work days following final decision on complaint and as required*</p>	<p>Follow-up: 30 days</p>		

Discrimination & Sexual Harassment Program Analysis

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
5. Definition of Sexual Harassment & Discrimination	DoD definition of sexual harassment and discrimination	DoD definition of sexual harassment and discrimination	- DoD definition of sexual harassment and discrimination - Discrimination modified for Army use	- DoD definition of sexual harassment and discrimination - Discrimination modified for Air Force use	- DoD definition of sexual harassment and discrimination - Discrimination modified for Coast Guard use	- Use DoD definition - Sexual harassment is outlined in NGB policy letters - Discrimination is outlined in NGB regulations
6. Formal Complaints - Record Release/ Documentation/ Confidentiality (limited - no legal definition)	Record release: Privacy Act	Record release: Privacy Act	Record release: Privacy Act	Record release: Privacy Act	Records release: Protected by FOIA Act and Privacy Act	Formal Report of Inquiry (ROI) - fully documented with sworn, transcribed testimony. - No pledge of confidentiality - Complete ROI given to complainant
FOIA: Redacted copies	FOIA: Redacted copies	FOIA: Redacted copies	FOIA: Redacted copies	FOIA: Redacted copies	FOIA: Redacted copies	Confidentiality: none, Official use only
Confidentiality: none, Official use only	Confidentiality: none, Official use only	Confidentiality: none, Official use only	Confidentiality: Official use only	Confidentiality: Official use only	Confidentiality: Official use only	

**Discrimination & Sexual Harassment
Program Analysis**

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
7. Equal Opportunity Specialist (Full time, Career, Rank)	Full time: Yes Career: Enlisted: No Officer: N/A Rank: E-6 to E-9	Full time: Yes Career: Enlisted: No Officer: N/A Rank: E-7 to E-9	Full time: Yes Career: Enlisted: No Officer: No Rank: E-7 to E-9	Full time: Yes Career: Enlisted: Yes Officer: No Rank: E-7 to E-9	Full time: Yes Career: Enlisted: No Officer: No Rank: E-7 to E-9	Full-time - NGB (NGB-EO) 18 member staff - State - State Equal Employment Manager, 1 per state, some have 2, based on size of state NG - Drill Positions - Army National Guard (ARNG) - EOAs at State Headquarters, Division, Brigade, #'s and grades vary - Air National Guard (ANG) - SL office at State Headquarters, and each flying unit, grade vary
8. Qualification of EO Specialist	- Defense Equal Opportunity Management Institute (DEOMI) trained* - Service specific training	- Defense Equal Opportunity Management Institute (DEOMI) trained* - Service specific training	- Defense Equal Opportunity Management Institute (DEOMI) - Service specific training	- Defense Equal Opportunity Management Institute (DEOMI) - Service specific training	- Defense Equal Opportunity Management Institute (DEOMI) - Service specific training	- DEOMI RC Course - Periodic NGB Training
9. Organizational Placement of EO Specialist/ Office	- Major Installation *	- 2nd and 3rd Echelon commands and higher (Brigades are comprised of 3,000 personnel) - Aboard aircraft carriers (CVs)	- Wing Commander and higher (assigned at every installation) *	- USCG districts, Headquarter (HQ) and major HQ commands	- NGB - Dir. for EO reports to Chief, NGB - State-SEEM reports to full time personnel officer, with direct access to AG - ARNG-EO officers generally report to Mil Pers Ofcr, some special staff - ANG - SL Ofcrs generally report to Assistant AG or C of S - Unit SL Officer report to Mission Support	Squadron Commander

Discrimination & Sexual Harassment Program Analysis

Discrimination & Sexual Harassment Program Analysis

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
13. Legal Review	Completed in formal complaint cases (except Nonjudicial Punishment (NJP) by Judge Advocate (JAG))	Occurs with Article 138 and in conjunction with the appeals process (Proposed policy change will require legal review of all formal complaints)	Required in all formal complaint investigations	Required in all formal complaint investigations	DOT Chief Counsel Required in all formal complaint investigations	<ul style="list-style-type: none"> - Required at state by state JA for AF investigation and resolution efforts. - Required at NGB by NGB JA for NGB reviews and Final decisions.
14. Appeal Process	Victim: Request mast up chain of command	Victim: Formal written procedures allow appeals within 7 days of notification on findings and resolution *	Victim: Formal written procedures allow appeals within 7 days of notification on findings and resolution *	Victim: Formal written procedures allow appeals with no time constraints after notification on findings and resolution *	Victim: Formal written procedures allow appeals with no time constraints after notification on findings and resolution *	<ul style="list-style-type: none"> - Complaint proceeds through chain of Command, through AG to NGB for final decision. (Complaint driven - if unresolved - process upward) - No internal admin ap to NGB decision - External ap to DoD IG, BCMR - Judicial ap to Federal Court under Title VI - Rare ap to St. Court under State Code
15. Higher Headquarters Review	As required/requested Article 138 - Secretary of the Navy (SECNAV)	As required/requested Article 138 - SECNAV. Complainant initiated request for review of formal complaint	Final decision made by major command's General Court Martial convening authority	Installation Commander review within 30 days of close out *	Not by USCG. DOT renders final decisions.	If unresolved all reviews and/or final decisions by NGB.

**Discrimination & Sexual Harassment
Program Analysis**

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
16. Standards for Complaint Investigations	Service regulations	Service regulations	Service regulations	Service regulation	DOCIR	NGB Investigator's Procedural Manual provides guidance and standards
17. Command Accountability	<ul style="list-style-type: none"> - Service specific instruction holds commander responsible - Reinforced by provisions to appeal for higher level review - Command assessments - Command assessments 	<ul style="list-style-type: none"> - Service specific instruction holds commander responsible - Reinforced by provisions to appeal for higher level review - Command assessments - Command assessments 	<ul style="list-style-type: none"> - Service specific instruction holds commander responsible - Reinforced by provisions to appeal for higher level review - Command assessments - Command assessments 	<ul style="list-style-type: none"> - Wing Commander reviews for all cases * 	<ul style="list-style-type: none"> - Commands must review ROI for administrative/ disciplinary actions as appropriate 	<p>In finding of discrimination of sexual harassment state AG is required to respond to NGB with documentation of corrective action to make victim whole and with summary of punitive/disciplinary action against perpetrator.</p>
18. Reprisal Procedures/ Prohibitions	<ul style="list-style-type: none"> - Policy prohibits reprisals - Commanding Officer /Chain of Command held accountable - SECNA VINST - SECNA VINST 5300.26B prohibits reprisal - EO complaint form states reprisal prohibited * 	<ul style="list-style-type: none"> - Policy prohibits reprisals - Commanding Officer /Chain of Command held accountable - Commander's plan to prevent reprisal (proposed) * 	<ul style="list-style-type: none"> - Policy prohibits reprisals - Commanding Officer /Chain of Command held accountable - Outlined in Air Force Policy Directives (AFPDs) 90-30, 36-27 and Air Force Instructions (AFIs) 36-2701 and 90-301 	<ul style="list-style-type: none"> - Addressed in COMDTINST M3350.11B - Policy prohibits reprisal 	<ul style="list-style-type: none"> - Reprisal is prohibited by NG military complaint reg. - Reprisal complaints are filed and processed exactly as any other discrimination complaint 	

Discrimination & Sexual Harassment Program Analysis

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
19. Equal Opportunity Education & Training	<p>Who: All active duty and reserve personnel</p> <p>Frequency:</p> <ul style="list-style-type: none"> - Within 90 days of accession and annually thereafter - After every PCS, within 90 days of reporting to new command - Navy leadership continuum - Annually at command level <p>Documented:</p> <ul style="list-style-type: none"> - Personnel training records - Training schedule (list of attendees) in command files 	<p>Who: All active duty and reserve personnel</p> <p>Frequency:</p> <ul style="list-style-type: none"> - Within 90 days of accession and annually thereafter - Every Army leadership course --enlisted --warrant officer --Officer - Biannually at unit level - CO directed specific training - Commander's call (OPD/INCPD) <p>Documented:</p> <ul style="list-style-type: none"> - Personnel training records - Training schedule (list of attendees) in command files 	<p>Who: All active duty and reserve personnel</p> <p>Frequency:</p> <ul style="list-style-type: none"> - Within 90 days of accession and annually thereafter - After every PCS, within 90 days of reporting to new command - Navy leadership continuum - Annually at command level <p>Documented:</p> <ul style="list-style-type: none"> - Personnel training records - Training schedule (list of attendees) in command files 	<p>Who: All active duty and reserve personnel</p> <p>Frequency:</p> <ul style="list-style-type: none"> - Mandatory training at all levels of career - PME - Upon Permanent Change of Station (PCS) - Periodic at unit level - CO directed specific training - Commander's call <p>Documented:</p> <ul style="list-style-type: none"> - Personnel training records - Training schedule (list of attendees) in command files 	<p>Who: All active duty and reserve personnel</p> <p>Frequency:</p> <ul style="list-style-type: none"> - receive standardized military civil rights training annually. - Mandatory training at all levels of career - Accession points - Periodic at unit level - CO directed specific training - Commander's call <p>Documented:</p> <ul style="list-style-type: none"> - Training is documented within individual records in the Personnel Management Information System. 	<ul style="list-style-type: none"> - ARNG-CDR are required to provide semi-annual EO training. Unit level documentation - ANG- CDR are required to provide 4 year HR training cycle. Documented by personnel office.
20. Support Services for Victims	<ul style="list-style-type: none"> - Equal Opportunity Specialist/Advisor * - Chain of command - Chaplain - Family Service/ Support Center counselors - Medical attention - Referral to outside agencies - legal assistance officers - EO/Sexual Harassment Advice Line 	<ul style="list-style-type: none"> - Equal Opportunity Specialist/Advisor - Chain of command - Chaplain - Family Service/ Support Center counselors - Medical attention - Referral to outside agencies - legal assistance officers - EO/Sexual Harassment Advice Line 	<ul style="list-style-type: none"> - Equal Opportunity Specialist/Advisor - Chain of command - Chaplain - Family Service/ Support Center counselors - Medical attention - Referral to outside agencies - legal assistance officer 	<ul style="list-style-type: none"> - Equal Opportunity Specialist/Advisor - Chain of command - Chaplain - Family Service/ Support Center counselors - Medical attention - Referral to outside agencies - Women's Information Phone line - USCG Employment Assistance Program (EAP) 	<ul style="list-style-type: none"> - Equal Opportunity Specialist/Advisor - Chain of command - Chaplain - Family Service/ Support Center counselors - Medical attention - Referral to outside agencies - legal assistance officer 	<ul style="list-style-type: none"> - Protected against reprisal - SEEM, EO, SL Officers, provide AD-HOC support or follow up on case by case basis. - No current requirement for mandatory, documented follow-up of all cases. However, under consideration

Discrimination & Sexual Harassment Program Analysis

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
21. Complaint Data	<p>U.S. Marine</p> <p>Data:</p> <ul style="list-style-type: none"> - Number of substantiated and unsubstantiated formal complaints by category - Type of discrimination - Actions taken - Demographics of alleged offender and complainant <p>Frequency: quarterly</p> <p>Use: Used by immediate commanders</p> <ul style="list-style-type: none"> - highlights areas of concern through categories of complaints; - Higher echelons - identified trends over time; DoD reporting requirements; adjust training 	<p>U.S. Navy</p> <p>Data:</p> <ul style="list-style-type: none"> - Number of substantiated and unsubstantiated formal complaints by category - Type of discrimination - Actions taken - Demographics of alleged offender and complainant <p>Frequency: quarterly</p> <p>Use: Used by immediate commanders</p> <ul style="list-style-type: none"> - highlights areas of concern through categories of complaints; - Higher echelons - identified trends over time; DoD reporting requirements; adjust training 	<p>U.S. Army</p> <p>Data:</p> <ul style="list-style-type: none"> - Number of substantiated and unsubstantiated formal complaints by category - Type of discrimination - Actions taken - Demographics of alleged offender and complainant <p>Frequency: quarterly</p> <p>Use: Used by immediate commanders</p> <ul style="list-style-type: none"> - highlights areas of concern through categories of complaints; - Higher echelons - identified trends over time; DoD reporting requirements; adjust training 	<p>U.S. Air Force</p> <p>Data:</p> <ul style="list-style-type: none"> - Number of substantiated and unsubstantiated formal complaints by category - Type of discrimination - Actions taken - Demographics of alleged offender and complainant <p>Frequency: quarterly</p> <p>Use: Used by immediate commanders</p> <ul style="list-style-type: none"> - highlights areas of concern through categories of complaints; - Higher echelons - identified trends over time; DoD reporting requirements; adjust training 	<p>U.S. Coast Guard</p> <p>Data:</p> <ul style="list-style-type: none"> - Number of substantiated and unsubstantiated formal complaints by category - Type of discrimination - Actions taken - Demographics of alleged offender and complainant <p>Frequency: semi-annually</p> <p>Use: Used by immediate commanders</p> <ul style="list-style-type: none"> - highlights areas of concern through categories of complaints; - Higher echelons - identified trends over time; DoD reporting requirements; adjust training 	<p>National Guard Bureau</p> <p>Data:</p> <ul style="list-style-type: none"> - Data is collected on formally filed complaints reaching AG level - Reported one time when AG receives - Reported to plus maintained by NGB using internally developed data system - Uses - NGB internal reports summaries, trends - NGB internal monitoring of status - External reporting to OSD for MEOA reports
22. Victim Relocation	<p>U.S. Marine</p> <ul style="list-style-type: none"> - CO can move victim or harasser, but not required - Complainant may request 	<p>U.S. Navy</p> <ul style="list-style-type: none"> - CO can move victim or harasser, but not required - Complainant may request 	<p>U.S. Army</p> <ul style="list-style-type: none"> - Complainant may request "Double victimization" forbidden by AR 600-20, Army Command Policy (EO Regulation) 	<p>U.S. Air Force</p> <ul style="list-style-type: none"> - Complainant may request "Threatened Airmen" provisions - Complainants may request commander's determination 	<p>U.S. Coast Guard</p> <ul style="list-style-type: none"> - If requested and appropriate. 	<p>National Guard Bureau</p> <ul style="list-style-type: none"> - Victim normally not relocated unless victim requests as resolution. - If discrimination or sexual harassment is found, normally consider relocation of perpetrator on case by case basis

**Discrimination & Sexual Harassment
Program Analysis**

Program Element	U.S. Marine	U.S. Navy	U.S. Army	U.S. Air Force	U.S. Coast Guard	National Guard Bureau
23. Performance Evaluations	MCO P 1610.7C contains the guidelines for the Performance Evaluation System for both enlisted and officer Fitness Reports. Fitness reports are an in-depth observation of the Marine's performance and professional qualities. Under the current provisions, there are no specific references to equal opportunity performance although Section B contains 14 professional quality categories which must be evaluated. Three of these could be related to equal opportunity, leadership, cooperation, and personal relations.	Navy's performance appraisal system evaluates both officers and enlisted personnel in EO performance. Elements for evaluators to consider when assigning a grade to EO performance include: actively works to maintain an environment free of discrimination/sexual harassment; supports the CMEO Program; and respect for the personal rights and sensitivities of others regardless of race or gender.	The Army's officer and noncommissioned officer evaluation reports both require the rater to assess the performance of the rated individual in the category "Supports EO/EO." Army regulatory guidance governing accountability in officer and noncommissioned officer performance evaluation reports:	Supervisors have several options to evaluate management of Equal Opportunity Programs in performance reports are rated such as judgment and decisions, professional qualities, and leadership skills. Enlisted performance reports include rating areas for leadership, judgement and professional qualities. Both Officers and enlisted, the overall assessment by the rater and senior rater provide additional opportunity to comment specifically on management of equal opportunity issues.	Officer's evaluations contain Interpersonal Relations evaluations that address Working With Others (i.e., demonstrated ability to promote a team effort, to cooperate, and to work with other people or units to achieve common goals) and Human Relations (i.e., the degree to which the officer fulfilled the letter and spirit of the Commandant's Human Relations Policy in personal relationships and officials actions). These specific performance ratings are described in detail and evaluated on a scale of 1 (lowest) to 7 (highest).	The National Guard's program mirrors the Services programs.

Table Comparing Definitions of Key EO Terms

Tab 5

Definitions	DoD	Army	Navy/Marines	Air Force
Discrimination	Illegal treatment of a person or group based on handicap, race, color, national origin, age, religion, or gender. DOD 1350.2, Enc1 2 para 2	Army defines "institutional discrimination" and "personal racism, sexism or bigotry" in AR 600-20 (See definitions below)	Same as DoD. SECNAVINST 5300.26B, Enc1 2 para 3 Also in OPNAVINST 5354.1C (w/o "handicap") The latter instruction applies to Navy only.	Basically same definition as DoD except for the conjunctive qualifier that actions leading to unequal treatment are discrimination if they are "are not supported by legal or rational considerations" Draft AFI 36-2701, Attach 1, Sec C (AFR 40-1613)*
Sexual Harassment		A form of sexual discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:	Same definition as DoD, except Army calls it a form of gender discrimination AR 600-20, 104 para 6-4	Same definition as DoD. SECNAVINST 5300.26B, Enc1 1

* Air Force is converting all regulations to instructions, so the definitions referring to Draft AFI 36-2701 should be read as incorporating definitions from AFR 40-1613.

Definitions	DoD	Army	Navy/Marines	Air Force
Sexual Harassment (cont'd)	<p>a term or condition of a person's job, pay, or career;</p> <ul style="list-style-type: none"> - submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting the person; or - such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment. 	<p>A commander or supervisor who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is en-</p>		

Military

Definitions	DoD	Army	Navy/Marines	Air Force
Sexual Harassment (cont'd)	gaging in sexual harassment. Similarly, any mil. member or civ. employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment. DoDD13350.2, Enc12	*Note that this definition was revised recently in 22 August 94 memorandum signed by Mr. Perry (Secretary of Defense).		Action by an institution that, through its policies and procedures, deprives a person of a right because of age, color, national origin, race, ethnic group, religion, or gender. It may occur overtly, covertly, intentionally, or unintentionally. Draft AFI 36-2701, Attach 1, Sec C
Institutional Discrimination		Different treatment of individuals in an organization which occurs based on race, color, gender, religion, or national origin; -results from the normal functioning of the organization; and -operates to the consistent disadvantage of a particular group AR 600-20, Gloss.		

Definitions	DoD	Army	Navy/Marines	Air Force
Personal racism, sexism, bigotry	The acting out of prejudices by an individual or group of individuals against another individual or group because of race, color, religion, gender, or national origin AR 600-20 Glossary Sec II	Action taken by an individual to deprive a person of a right because of age, color, national origin, race, ethnic group, religion, or gender. It can be overt/cover, intentional/unintentional Draft AFI 36-2701, Atch1	This form of sexual harassment occurs when the offender threatens the victim (e.g., perform sexual favors or suffer the consequences) Draft AFI 36-2701, Atch 1, SEC C	A type of sexual harassment that occurs when submitting to or rejecting such behavior is used as a basis for decisions affecting a person's employment, pay, job, or career, (e.g., a promise of employment, promotion, threat or actual demotion, duty assignment, positive or negative evaluation) SEC NAVINST 5300.26B
Quid pro quo				Encl 2, para 5

Military

Definitions	DoD	Army	Navy/Marines	Air Force
Reprisal	Taking or threatening to take an unfavorable personnel action against or withholding or threatening to withhold a favorable personnel action from a military member for making or preparing a protected disclosure. DoDD 7050.6 Encl 1, para 9 (protected disclosure and Personnel action defined below)	DA personnel are prohibited from taking any action that discourages a soldier or family member from filing a complaint or seeking assistance when resolving EO matters. Personnel also are prohibited from taking any disciplinary or adverse action against a soldier for filing a complaint, seeking assistance, or cooperating with an IO in an EO investigation AR 600-20, para 6-8b	Wrongful threatening or taking of either unfavorable action against another or withholding favorable action from another solely in response to a report of sexual harassment or violations of this instruction SECNAVINST 5300.26B, Encl 2 para 8 In Whistleblower context, Navy definition is same as DOD definition. SECNAVINST 5370.7A	Same as DoD. AFI 90-301 (See definition of protected disclosure below) (Note: AFI 36-2701 protects "individual" v. "military member")
Complainant				Individual(s) who make allegations against an Air Force member, program, or organization, using IG complaint system AFI 90-301, Atch 1
				Person complaining of discrimination or mistreatment. OPNAVINST 5354.1C, App. B (Applies to Navy only)

Definitions	DoD	Army	Navy/Marines	Air Force
Discrimination complaint				An allegation, made through official channels and documented on EOT complaint summary or high-level inquiry action, that an act or circumstance of discrimination has occurred. Draft AFI 36-2701, Atch 1, Sec C
Disparaging term or comment				Communication used to degrade or imply a negative distinction or perception, stereotype, attitude or overtone about a person's age, color, national origin, race, ethnic group, religion, or sex. It may take the form of insults, printed or visual material, signs, symbols, posters, banners, or insignia Draft AFI 36-2701 Atch 1, Sec 1

Definitions	DoD	Army	Navy/Marines	Air Force
Equal Opportunity	The right of all persons to participate in and benefit from programs and activities for which they are qualified. These programs and activities shall be free from social, personal, or institutional barrier. That prevent people from rising to as high a level or responsibility as possible. Persons shall be evaluated only on individual merit, fitness, and capability, regardless of race, color, gender, national origin, age, or handicap except as prescribed by statute or DoD/Service policy. DoDD 1350.2 Encl 2, para 4	Consideration and treatment based upon merit, fitness, and capability irrespective of race, color, religion, gender, or national origin. AR 600-20 Glossary, Sec II	Fair personnel management and development practices which allow individual achievement to be limited only by their aspirations, abilities and talents. Equal consideration and treatment within the laws based upon merit, fitness, and capability, without additional influence of race, color, religion, gender or national origin. OPNAVINST 5354.1C, APP. B (Applies to Navy only)	Conditions under which individual merit, achievement and ability alone govern participation, treatment, and potential for success of AF members in AF life. Draft AFI 36-2701 Atch 1, Sec C

Military

Definitions	DoD	Army	Navy/Marines	Air Force
Minority Group		Any group distinguished from general population in terms of race, color, religion, gender, or national origin AR 600-20, Gloss.	A racial or ethnic group physically or culturally different from the majority. OPNAVINST 5354.1C, App.B (Navy only)	
Reasonable person			An objective test used to determine if behavior constitutes sexual harassment, i.e. what a reasonable person's reaction would have been under similar circumstances. The standard is from the recipient's perspective, and not stereotyped notions of acceptable behavior.	SECNAVINST 5300.26B, Encl 2 para 6

Definitions	DoD	Army	Navy/Marines	Air Force
Protected Disclosure	A lawful communication to a Member of Congress, any IG, or any member of a DoD audit, inspection, investigation, or law enforcement organization in which military member makes a complaint or discloses information that he or she reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety	SECNAVINST 5370.7A promulgates DOD definition for Navy/Marines	Same as DoD except includes communications made within other established Air Force grievance channels (to include Social Actions) AFI 90-301, Attach 1	

Definitions	DoD	Army	Navy/Marines	Air Force
Personnel Action	Any action taken on a member of the Armed Forces that affects or has the potential to affect that member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; and any other significant change in duties or responsibilities inconsistent with military member's rank.	SECNAVINST 5370.7A promulgates DoD definition within Navy/Marines		

Military

Definitions	DoD	Army	Navy/Marines	Air Force
Hostile Environment			A type of sexual harassment that occurs when the unwelcome sexual behavior of one or more persons in a workplace produces a work atmosphere that is offensive, intimidating, or abusive to another person using a reasonable person standard SECNAVINST 5300.26B, Encl 2 para 4	

Definitions	DOD	Army	Navy/Marines	Air Force
Sexual Harassment	<p>A form of sexual discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> -Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; -Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or -such conduct interferes with an individual's performance or 	<p>Same as DOD definition, except third circumstance constituting sexual harassment is as follows: Such conduct <u>has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, or offensive working environment.</u></p> <p>AR 690-600, Glossary, Sec III; 29 CFR §1604.11</p>	<p>Same as DOD definition SECNAVINST 5300.26B, Encl 1 <u>(Prohibits reprisal and false complaints in para. 8b)</u></p>	<p>Same as DoD definition with exceptions noted below AFI 36-1201 Attach 1</p>

Civilian

Definitions	DoD	Army	Navy/Marines	Air Force
Sexual Harassment (cont'd)	or creates an intimidating, hostile, or offensive environment	Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee.	Any civilian employee or military member who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature. DoDD 1440.1, Encl 2, para 10	

Definitions	DoD	Army	Navy/Marines	Air Force
Discrimination	Illegal treatment of a person or group based on race, color, national origin, religion, sex, age, or disability. DODD 1440.1 Encl 2, para 3	Any act or failure to act, impermissibly based in whole or in part on a person's race, color, religion, sex, national origin, age, physical/mental handicap, and/or appraisal, that adversely affects privileges, benefits, or working conditions; results in disparate treatment; or has a disparate impact on employees or applicants	Same as Army definition, except that Navy/Marines use the term "handicapping condition" instead of "physical/mental handicap" OCPMINST 12713.2 APP. J (Navy/Marines)	An unlawful employment practice that occurs when an employer fails or refuses to hire, discharges, or otherwise discriminates against any individual with respect to compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, reprisal, physical/mental disability; limits, segregates, or classifies employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status

Definitions	DOD	Army	Navy/Marines	Air Force
			as an employee because of race, color, religion, sex, national origin, age, re-praisal, physical/mental disability Draft AFI 36-1201 Atch 1	Air Force uses 5 U.S.C. § 2302 definition for reprisal: An employee may not take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of:
Reprisal		Unlawful restraint, coercion, or discrimination against complainants, their representatives, witnesses, Directors of EEO, EEO Officers, investigators, counselors, and other agency officials with responsibility for processing EEO discrimination complaints during any stage in the presentation and processing of the complaint, including the precomplaint process, or because of opposi-	Same as Military definition above see SECNAVINST 5300.26B, Encl 2 para 8 OCPMINST 12713.2 also addresses reprisal	(A) exercise of any appeal, complaint or grievance right granted by any law, rule, or regulation; (B) testifying or otherwise lawfully assisting

Definitions	DoD	Army	Navy/Marines	Air Force
Reprisal (cont'd)				<p>any individual in the exercise of any right referred to in subparagraph (A);</p> <p>(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel in accordance with applicable provisions of law; or</p> <p>(D) for refusing to obey an order that would require the individual to violate a law.</p> <p>5 U.S.C. § 2302(b)(9)(A-D)</p>

Definitions	DoD	Army	Navy/Marines	Air Force
Complainant		<p>All Army employee, a former Army employee, or an applicant for Army employment who files a formal complaint of discrimination</p> <p>AR 690-600</p> <p>Glossary, Sec II</p>	<p>An Army employee, a former Army employee, or applicant for employment who files a formal complaint of discrimination</p> <p>Draft AFI 36-1201</p> <p>Attach 1</p>	

Secretary of Defense memorandum, "Prohibition of Sexual Harassment in the Department of Defense (DoD)," August 22, 1994



THE SECRETARY OF DEFENSE

WASHINGTON, THE DISTRICT OF COLUMBIA

22 AUG 1994

pt. 1
C. 1994

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Prohibition of Sexual Harassment in the Department of Defense (DoD)

It remains the policy of the Department of Defense (DoD) that sexual harassment is strictly prohibited in the Armed Forces and the civilian work force. The definition of sexual harassment is as follows:

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

(2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment

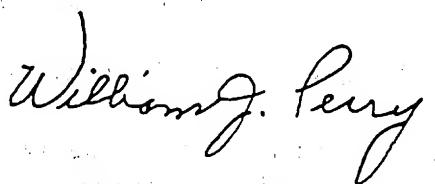
The above definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or abusive [Note: "workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day].

Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

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Attached are initial program guidelines regarding the elimination of sexual harassment in both the military and civilian environments. I have tasked the Defense Equal Opportunity Council Task Force on Discrimination and Sexual Harassment to make additional recommendations to me to eradicate this illegal behavior. These recommendations will result in the adoption of additional sexual harassment program guidelines.

Please send a copy of your implementing instructions to the Under Secretary of Defense (Personnel and Readiness) within 30 days. If you desire assistance or have questions, please contact Mr. Claiborne D. Haughton Jr., Acting Deputy Assistant Secretary of Defense (Equal Opportunity) at (703) 695-0105 or DSN 225-0105.

A handwritten signature in black ink that reads "William J. Perry". The signature is cursive and fluid, with "William" on the top line and "J. Perry" on the bottom line.

Attachment:

As stated

Sexual Harassment Program Guidelines

You are hereby directed to carry out a program that underscores DoD's commitment to eliminating sexual harassment from the DoD work place and to maintaining a work place environment free of unlawful discriminatory practices. As a minimum, your program shall:

- (1) Include the issuance of clear policy statements reaffirming that sexual harassment will not be practiced, condoned, or tolerated;
- (2) Establish training requirements for all military and civilian personnel to give guidance on what constitutes sexual harassment and how DoD personnel who believe they have been subjected to sexual harassment may seek redress;
- (3) Establish quality control mechanisms to ensure that sexual harassment training programs are working;
- (4) Prohibit reprisals against individuals who make a sexual harassment complaint or provide information about incidents of sexual harassment and establish procedures to investigate and resolve promptly complaints of reprisal by individuals;
- (5) Inform DoD personnel, military and civilian, that failure to comply with established policies may be reflected in annual performance ratings and fitness reports and could result in adverse administrative, disciplinary, or legal action;
- (6) Establish toll free advice and counseling hotlines for all personnel to provide confidential assistance in obtaining information relating to sexual harassment and discrimination complaints;
- (7) Assign a high priority to the prompt and thorough investigation and resolution of sexual harassment complaints; and ensure that any corrective action taken is reasonably sufficient to preclude recurrence of discriminatory conduct and addresses any management deficiencies or other contributing factors that gave rise to the allegations;
- (8) Make sexual harassment education, prevention, and complaint resolution high priority items for review in appropriate inspections of and visits to DoD facilities and agencies by the Inspectors General of DoD and the Components;
- (9) Provide semi-annual reports in the format requested by the Under Secretary of Defense (Personnel and Readiness) on your progress, the effectiveness of your programs, and your plans for the future;

- (10) Ensure that affected personnel in the unit where harassment is alleged to have occurred promptly receive a report including investigative findings and corrective action, to the extent allowed under DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982; and
- (11) Conduct and document follow-up with complainants and personnel in the unit to determine the effectiveness of corrective action and ensure that complainants are not subsequently subjected to reprisals or threats.

To assist you in complying with these guidelines, the Defense Equal Opportunity Management Institute (DEOMI) will coordinate with your training organizations to establish minimum standards for effective military and civilian sexual harassment training. In addition, the Under Secretary of Defense (Personnel and Readiness) will initiate a comprehensive study of sexual harassment in the Department of Defense and, in coordination with the DoD General Counsel, will prepare amendments reflecting the above guidance for incorporation into DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program," and DoD Directive 1440.1, "The DoD Civilian Equal Opportunity (EEO) Program."

Administrative Measures for Correcting Military Offenders

Tab 7

ADMINISTRATIVE MEASURES FOR CORRECTING MILITARY OFFENDERS¹

SANCTION	REMARKS
Counseling	may be oral or written, of record or not of record
Nonpunitive admonition/reprimand/censure	may be oral or written, of record or not of record
Administrative withholding of privileges	
Adverse performance evaluation	
Reassignment of or relief from duties/early transfer/delay of transfer	may be with or without adverse record entries
Denial of reenlistment/continuation	
Withholding/delay of promotion	
Administrative reduction of enlisted members	
Vacation of promotion to O-7	Per 10 U.S.C. § 625(a), the President may vacate such a promotion during an officer's first 18 months of service as O-7.
Suggested resignation/retirement/transfer to inactive reserve status	
Administrative separation	
Retirement at lower grade	if service secretary determines service at higher grade not satisfactory 0-9 and 0-10 retirements require Senate advice and consent.

Note 1: For the most part, these measures are not mutually exclusive and may be imposed concurrently.

TAB A

Comparison of UCMJ Forums

Tab 8

COMPARISON OF UCMJ FORUMS

FORUM	MAXIMUM PUNISHMENT	REMARKS
Nonjudicial punishment (NJP)	Punitive admonition/reprimand Forfeiture of pay ($\frac{1}{4}$ month's pay for 2 months) Reduction in grade (enlisted) Extra duties (enlisted) (45 days) Restriction to specified limits (60 days) Correctional custody (enlisted) (30 days) Arrest in quarters (officers) (30 days) Confinement on bread/water (enlisted members attached to/embarked in a vessel) (3 days)	Limited punishments for "minor" offenses. Neither a judicial nor a criminal proceeding. Permissible punishments vary depending on the grade/rank of the offender as well as the grade/rank/position of the officer imposing punishment. Other options include dismissal of charges, referral to court-martial, referral to a superior authority for disposition, or postponement of action (e.g., pending further investigation).
Summary Court-Martial	Punitive reprimand Restriction for 2 months Forfeiture/fine of $\frac{2}{3}$ pay per month for 1 month Hard labor without confinement for 45 days Reduction to lowest pay grade Confinement for 1 month	Can only try enlisted members Member has absolute right to refuse Permissible punishments may vary depending on the rank of the offender
Special Court-Martial	Punitive reprimand Restriction for 2 months Forfeiture/fine of $\frac{2}{3}$ pay per month for 6 months Hard labor without confinement for 3 months (enlisted) Reduction to lowest pay grade (enlisted) Loss of promotion numbers (officers) Confinement for 6 months (enlisted) Bad-conduct discharge (enlisted)	Punishment options depend upon the offenses involved (see TAB C) up to the maximum jurisdictional limits of a special court-martial as indicated at left.
General Court-martial	See TAB C.	Punishment only limited by the maximums authorized for offense(s) involved

TAB B

**Charging Sexual Harassment and Other Discrimination Under the
UCMJ**

Tab 9

CHARGING SEXUAL HARASSMENT OR OTHER DISCRIMINATION UNDER THE UCMJ
 The following is a non-exclusive summary of possible charges:

BEHAVIOR	UCMJ ARTICLES	MAX PUNISHMENT (discharge, confinement)	REMARKS
Threatening to influence adversely another's job, pay or career in exchange for sexual favors	127 (extortion) 134 (communicating a threat)	DD, 3 yrs DD, 3 yrs	
Offering/accepting sexual favors for job rewards	134 (bribery/graft)	DD, 5/3 yrs (bribery/graft)	a willing "victim" commits bribery; a willing supervisor commits graft
Cruelty, oppression, or maltreatment of subordinate by superior	93	DD, 1 yr	includes "quid pro quo" harassment and deliberate or repeated offensive comments or gestures (measured by objective standard); conduct does not have to be physical/sexual; victim must be "subject to the orders" of the accused but need not be subject to UCMJ
Using official position for private gain; use of supervisor's or subordinate's official time for unofficial activities; use of government property for unauthorized purposes; unauthorized gift to superior	92(1) (violating lawful General order adopting Office of Government Ethics standards of conduct -- promulgated by DODDIR 5500.7 and DOD 5500.7-R)	DD, 2 yrs	can be committed even when "victim" is willing; in many instances, willing "victim" also commits offense
Language or gestures strong enough to risk inciting breach of peace	117 (provoking words/gestures)	discharge N/A, 6 mos	victim must be subject to UCMJ & present; N/A to proper reprimand/reproof/counseling
Disrespectful language or behavior - could include milder behavior than that needed to constitute "sexual harassment"	89 (disrespect to superior commissioned officer)	BCD, 1 yr	accused must know victim was officer; victim need not have been present; victim need not have been executing office
	91(3) (disrespect to WO-1 or NCO/PO executing his/her office)	discharge/confinement varies based on victim's status (maximum: BCD, 9 mos)	accused must be WO-1 or enlisted; accused must know victim's status; victim must have been present; victim need not be superior
Indecent language	134 (indecent language)	BCD, 6 mos	can be written as well as verbal
Nonconsensual physical conduct or attempted nonconsensual physical conduct	90 (assaulting superior commissioned officer executing his/her office)	DD, 10 yrs (death possible in wartime)	accused must know victim's status; any offensive touching, however slight;
	91(1) (assaulting WO-1/NCO/PO executing his/her office)	varies from DD/5 yrs to DD/1 yr based on victim's status	accused must be WO-1 or enlisted; accused must know victim's status; victim need not be superior; any offensive touching, however slight
	128 (assault, assault and battery, assaulting officer/WO-1 (not executing office), inflicting grievous bodily harm)	varies from BCD/6 mos to DD/10 yrs (based on victim's status, force used, injuries)	battery includes any offensive touching, however slight
	134 (indecent assault)	DD, 5 yrs	requires intent to gratify accused's lust
	134 (indecent exposure)	BCD, 6 mos	

BEHAVIOR	UCMJ ARTICLES	MAX PUNISHMENT (discharge, confinement)	REMARKS
Consensual physical conduct of a sexual nature	134 (adultery) 134 (indecent acts with another)	DD, 1 yr DD, 5 yrs	at least one must be married to someone else
Fraternalization: unduly familiar inappropriate personal relationship, which need not necessarily be sexual	92(1) (violating General order, if applicable (e.g., as in USN/USMC))	DD, 2 yrs	encompasses certain officer-officer and enlisted-enlisted (as well as officer-enlisted)
Supervisor failing to take adequate steps to foster a climate free of sexual harassment or discrimination, investigate allegations, or protect victims/witnesses from reprisals	134 (officer fraternization)	Dismissal, 2 yrs	only applies to officer accused in officer-enlisted relationship
Accused is an officer	92(3) (dereliction of duty)	BCD, 6 mos	necessary that accused knew or should have known of duties, but not necessary that accused knew or should have known about actual instances of sexual harassment
Other conduct prejudicial to good order and discipline, or service discrediting	133 (conduct unbecoming an officer) 134 (the general article)	Dismissal, confinement varies	includes behavior in a private capacity can include conduct that violates other Federal or state law

Note 1: In the Navy and Marine Corps, sexual harassment may also be charged under UCMJ Article 92(1) for violation of the lawful general order promulgated by SECNAVINST 5300.26B as summarized below:

CONDUCT (applies to all conduct which occurs in or impacts a DoD working environment; reasonable person standard used to determine violation)	REMARKS (maximum punishment for each violation. Includes dishonorable discharge (DD) and 2 years' confinement)
Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment sexual nature	"quid pro quo" sexual harassment; (e.g., promise of employment, promotion, threat of or actual demotion, duty assignment, positive/negative eval) "quid pro quo" sexual harassment could include a work environment in which sexual slurs, the display of sexually suggestive calendars, or other offensive sexual behavior abound
Take reprisal action against a person who provides information on an incident of alleged sexual harassment	wrongful threatening/taking unfavorable action (or withholding favorable action) solely for reporting sexual harassment
Knowingly make false accusation of sexual harassment	honest belief in accusation's validity is complete defense
While in a supervisory or command position, use, condone, or ignore sexual harassment of which supervisor/commander has knowledge or has reason to have knowledge	

Note 2: While in some situations such extremely serious criminal conduct as aggravated assault, rape, forcible sodomy, etc., might technically constitute sexual harassment, the sexual harassment aspects of these major criminal cases are at best only secondary.

**Assistant Inspector General for Departmental Inquiries, *Review of*
Military Department Investigations of Allegations of Discrimination by
Military Personnel (Washington, D.C.: Department of Defense
Inspector General: March 1994)**

MARCH 1994

**Department of Defense
Inspector General**

**Review of Military Department Investigations
of Allegations of Discrimination
by Military Personnel**



Assistant Inspector General for Departmental Inquiries

EXECUTIVE SUMMARY

Over the past several years, the Military Services have aggressively reviewed the quality and effectiveness of their equal opportunity (EO) programs. However, none of the Services' reviews specifically assessed the adequacy of investigations conducted in response to allegations of discrimination by military members. This review was undertaken to determine whether there was cause for the Department to consider modifications to existing guidance and directives in that regard. The report presents our findings regarding the adequacy of those investigations and sets forth observations pertaining to the quality of equal opportunity investigations and the Department's military equal opportunity program.

In summary, we found that 86 percent of the Services' investigations of military discrimination complaints we reviewed obtained sufficient evidence to support the conclusions drawn and satisfied the criteria we established to assess the adequacy of the investigations. Further, in 48 percent of the investigations we determined to be adequate, the inquiry officer or equal opportunity advisor went beyond the specific issue raised by the complainant to identify factors, such as command climate, work environment and other leadership and management issues, that may have contributed to the incident. We found that those investigations that examined contributing factors may provide commanders and EO program managers considerable insight regarding the overall effectiveness of existing programs, particularly in the areas of training, awareness and individual responsibility.

We also found significant that the allegations were substantiated or partially substantiated in 56 percent of the cases reviewed and that substantial administrative action or nonjudicial punishment was taken in most cases.

We made the following observations:

- o Feedback to complainants regarding the outcome of the investigations of their complaints was documented in 65 percent of all cases reviewed, and follow-up to measure the effectiveness of corrective action taken or to detect and deter reprisal was documented in 6 percent. Feedback to complainants and follow-up should be required and documented in each case.
- o There are no standard definitions for any type of discrimination, other than sexual harassment, within the DoD. As a result, anything from an isolated instance of "name calling" to arbitrary personnel actions based on gender or race may be labeled and reported as discrimination.
- o The duties and the career paths of EO advisors vary among the Services. Further, the rank and experience of EO advisors may not be commensurate with the level of assigned responsibility.
- o The Services have initiated improvements in military equal opportunity programs.

I. INTRODUCTION

The most aggressive reviews of the military equal opportunity programs since the 1970s occurred following the Tailhook incident of 1991. In July 1992, at the request of the Secretary of the Army, a panel of university officials and retired general officers assessed the viability of the Army Equal Opportunity program. In June 1993, the Air Force Inspector General reported to the Air Force Chief of Staff his findings regarding the effectiveness of sexual harassment prevention and the handling of related complaints. In August 1993, the Naval Inspector General reported to the Vice Chief of Naval Operations his findings regarding the effectiveness of the Command Managed Equal Opportunity Program, including the quality of oversight by the Bureau of Naval Personnel, and existing program guidance, roles and responsibilities of equal opportunity advisors, and the effectiveness of equal opportunity training programs.

However, none of the reviews specifically addressed the adequacy of investigations into allegations of discrimination filed by military personnel. Hence, we undertook such a review. While we found the Services' investigations were generally adequate, our findings and observations confirmed the need for many of the initiatives under way and identified areas for increased emphasis.

II. SCOPE

Between August 13 and October 8, 1993, we visited three Army installations, one Navy installation (representing several naval commands), three Air Force installations and one Marine Corps installation.¹ We selected the installations based on the number of reported complaints and geographic proximity.

For the purposes of the review, we defined an "investigation" as any administrative process in which allegations of discrimination against military personnel were examined, evidence obtained, witnesses interviewed, facts established and a written report prepared. We defined "adequacy" as obtaining sufficient information to confirm or refute an allegation.²

We reviewed all documentation on file for 152 informal and formal inquiries conducted by commanders, inspectors general, equal opportunity advisors, appointed inquiry officers and military police investigators: 37 Army, 16 Navy, 88 Air Force and 11 Marine Corps.³

1 The review team consisted of field grade officers from the OIG, DoD, each Military Service, and the Defense Equal Opportunity Management Institute. The team represented 20 years experience in equal opportunity matters and approximately 15 years experience in inspections, investigations and oversight.

2 The criteria we used to evaluate the adequacy of each investigation are at Appendix 1.

3 We noted that the number of complaints reported by the Army and Navy major commands for the installations we visited was higher than the number of complaint records available for review. The Army reported 117 complaints and 37 were available for review; the Navy reported 35 and 8 were available for review. Because the Air Force has a central repository for equal opportunity complaints, there were a greater number available for review.

We interviewed 65 equal opportunity advisors, 33 complainants, 17 alleged offenders, 16 commanders and executive officers, 12 inquiry officers and 9 judge advocates.

In addition, we reviewed all Department of Defense and Military Department directives pertaining to the military equal opportunity programs, roles of equal opportunity advisors, and the conduct of administrative investigations. We also reviewed the Services' Military Equal Opportunity Assessment reports submitted annually to the Assistant Secretary of Defense (Personnel and Readiness).

III. FINDINGS

A. Adequacy of Investigations

Of 152 investigations reviewed, we found that 131 (86 percent) obtained sufficient evidence and key testimony to support the conclusions drawn and satisfied the criteria established to assess the adequacy of the investigations.

The following table summarizes our findings by Service. Six of the investigations we reviewed (4 percent) had insufficient documentation to determine the adequacy of the investigation.

ADEQUACY OF INVESTIGATIONS BY SERVICE				
SERVICE	ADEQUATE	INADEQUATE	INSUFFICIENT DOCUMENTATION	TOTAL
ARMY	26	8	3	37
NAVY	14	1	1	16
AIR FORCE	81	5	2	88
MARINE CORPS	10	1	0	11
TOTAL	131	15	6	152

For those investigations determined to be inadequate, one or more of the following deficiencies was noted:

- o The specific allegations were not addressed.
- o Complainant or key witnesses were not interviewed.
- o Inquiry officers asked closed-ended questions without adequate follow-up.
- o The analysis of the evidence was inadequate.
- o Reports were conclusionary with no discussion of the evidence or supporting documentation.
- o Reports contained opinions unsupported by the evidence.
- o Conflicting testimony was not resolved.
- o Corroborating testimony was not sought.

In 63 cases (48 percent) of the investigations determined to be adequate, we found that the inquiry officers and equal opportunity advisors went beyond addressing the specific issues raised in the complaint and identified factors such as management, leadership and training deficiencies that may have contributed to the occurrence of the incident.

Many of the factors the inquiry officers and equal opportunity advisors pursued focused on command climate. Some of the specific factors addressed included work environments in which sexual or racial comments and joking had been tolerated and engaged in by supervisory personnel, inconsistent actions on the part of supervisory personnel creating either the appearance of favoritism or leading to perceptions of discrimination, and failure of supervisory personnel who were aware of sexual harassment or other discriminatory conduct to take appropriate action. In several cases, the inquiry officer or EO advisor also researched whether the individuals involved had recently attended equal opportunity training.

We found the investigations that identified contributing factors may provide commanders and EO program managers considerable insight regarding the overall effectiveness of existing programs, particularly in the areas of training, awareness and individual responsibility.

We also found significant that 85 (56 percent) of the investigations fully or partially substantiated the complaint. Of those substantiated, nonpunitive administrative action (i.e., letter of counseling or reprimand) was taken in 58 cases (68 percent) and nonjudicial punishment under the Uniform Code of Military Justice (UCMJ) was taken in 20 cases (24 percent).⁴ The data indicated that substantiated cases in the Army and the Air Force were more likely to result in administrative actions while substantiated cases in the Navy more often resulted in nonjudicial punishment under the UCMJ.⁵

B. Feedback and Follow-up

Feedback to complainants regarding the outcome of the investigation into their complaint was documented in 65 percent of all cases reviewed, and follow-up to measure the effectiveness of corrective action taken or to detect and deter reprisal was documented in 6 percent.

All of the Services' equal opportunity regulations require that the commander, designee or EO advisor provide feedback to the complainant regarding the outcome of an investigation. The data also indicated a vast disparity by Service. Specifically, we found documentation of feedback to complainants in 22 percent of Army cases, 6 percent of Navy cases, 97 percent of Air Force cases and 45 percent of Marine Corps cases.

Related to feedback is the issue of follow-up. Department of Defense Directive 1350.2, Military Equal Opportunity Program, requires "fair, impartial and timely

⁴ No documentation was contained in the other seven case files to indicate what, if any, corrective action had been taken.

⁵ Appendix 6 provides a table of corrective action for each case reviewed.

investigation, resolution, and follow-up" of equal opportunity complaints. However, the Directive does not specifically define what actions may constitute "follow-up." Nonetheless, the Services' equal opportunity regulations require assessment of the effectiveness of the programs, of which complaint resolution is an integral part. The Services regulations also prohibit reprisal for filing equal opportunity complaints and some regulations mandate follow-up to ensure reprisal does not occur.

We found documentation of follow-up in only six percent of the cases reviewed. The Air Force is the only Service that has a standard form that provides a designated block to annotate follow-up with complainants concerning reprisal. However, we found that those designated blocks were most often used to document administrative matters rather than to assess the effectiveness of corrective action taken or the incidence of reprisal.

Commanders, inquiry officers and equal opportunity advisors must be alert to any indication from complainants or other source that the potential for reprisal exists. The following example demonstrates the point: Documentation of an interview of the alleged offender by the inquiry officer indicated the alleged offender made an explicit, violent threat against the complainants.⁶ Although the reviewing officials made note that the comment had been made, no documentation was found that indicated command officials addressed the comment. We also found no indication of follow-up with the complainants to ensure the alleged offender did not act on his expressed threat.

In another example, the complainant was unaware that significant action had been taken against the alleged offender. That complainant told us that the offender had "told people that everybody involved [in the complaint] was going to get what they deserve." She also said that she had been subjected to subtle forms of reprisal, had been taunted by peers, and, as a result, planned to separate from the Service when she completed her enlistment.

We found through interviews with complainants that those who received feedback had greater confidence in their command than those who did not, and that the lack of feedback fostered perceptions of command inaction and tolerance. Follow-up provides command officials the opportunity to assess the effectiveness of corrective action taken and the early detection and prevention of reprisal.

C. Lack of DoD Definitions Complicates Analysis and Reporting

We found no standard definitions for any type of discrimination, except for sexual harassment, within the DoD. As a result, anything from an isolated instance of "name calling" to arbitrary personnel actions based on gender or race are labeled and reported as discrimination.

The DoD Directive 1350.2 defines the terms "sexual harassment" and "discrimination" (see Appendix 2). All of the Services use the Directive's definition for sexual harassment. However, none of the Services use the Directive's definition for "discrimination." The Army defines "institutional" discrimination, the Air Force defines "institutional, arbitrary, and

⁶ He told the inquiry officer, "These women better not let me see them again or I'll slam the f--- out of them."

personal" discrimination, and the Navy and Marine Corp have different definitions for the same term "discrimination," all of which could lead to different legal interpretations. Appendix 3 provides the complete definitions for "discrimination" published by each Service. According to the various definitions by the Services, discrimination may be one or more of the following:

- o Different treatment based on race, gender, etc. (Army)
- o Depriving an individual of a right. (Air Force)
- o Denying an individual equal opportunity. (Marine Corps)
- o Denying an individual equal treatment. (Navy)
- o Any action that unlawfully or unjustly results in unequal treatment. (Air Force)
- o Using terms to degrade or infer negative statements pertaining to race, gender, etc. (Air Force)

The lack of standard definitions creates the situation where an action or offense could be considered "discrimination" in one Service, but not in another.

Further, the Directive requires that Service policies cite specific action to be taken against any individual who commits "an act of discrimination" yet the Directive does not provide parameters or criteria by which to make such a determination except in the case of sexual harassment. As a result, we found that the specificity of the DoD definition for sexual harassment compared to that for "discrimination" may result in "different treatment" of allegations of discrimination. For example, the definition of sexual harassment specifically includes unwelcome sexual comments or innuendo. As a result, sexually offensive or unwelcome speech may receive greater scrutiny and sanctions if substantiated than racial or ethnic epithets open to interpretation of much broader definitions of discrimination. The lack of standard definitions and terminology for "discrimination" may result in inconsistent analysis of conduct alleged to be discriminatory.

Related to the issue is the impact the lack of standard terms has on the capture and analysis of discrimination complaint data. The following paragraph demonstrates both points presented:

The Air Force uniquely defines as discrimination the use of any term that "degrades or infers negative statements" pertaining to age, color, national origin, race, ethnic group, religion or sex. We found six Air Force cases where the singular use of the term "bitch" was investigated, substantiated and statistically reported as discrimination. The available documentation suggested that the other Services treat similar conduct as inappropriate or unprofessional behavior, but would not routinely label or report such conduct as discrimination.

We believe the lack of standard terms and criteria for discriminatory conduct precludes an accurate assessment of the nature and scope of discriminatory activity within the DoD.

D. EO Advisors

The duties and career paths of EO advisors vary among the Services. Further, their rank and experience may not be commensurate with the level of responsibility assigned.

EO Advisor Responsibilities

The DoD Directive 1350.2 does not specifically define the roles and responsibilities of EO advisors. The Directive requires that the Military Departments:

"fill sufficient full-time staff positions and allocate sufficient resources to conduct all EO programs. Equal opportunity staff personnel shall be placed at a level that enables them to communicate effectively the goals and objectives of the program and obtain the understanding, support, and commitment of the organization's leaders."

We found that the duties of EO advisors as described in Service regulations include broad management responsibilities that require considerable analytical skills such as:

- o Recognizing and assessing indicators of institutional and individual discrimination in organizations.
- o Helping commanders anticipate, prevent and eliminate EO factors that detract from mission readiness.
- o Collecting, organizing, and interpreting demographic data concerning all aspects of EO climate assessment and conducting trend analysis.
- o Receiving and acting on EO complaints.
- o Acting as technical advisor to investigating officers and coordinating on completed investigations.

The chart at Appendix 4 provides a more detailed listing of the responsibilities assigned EO advisors.

EO Advisor Training

The Defense Equal Opportunity Management Institute (DEOMI) trains EO advisors and program managers. Over the last 21 years, the DEOMI has graduated over 12,000 trained personnel for the Armed Forces--active, Reserve and National Guard.⁷ Active duty graduates total approximately 4,000 for the Army, 1,200 each for the Navy and the Air Force, and six for the Marine Corps.⁸

⁷ A more detailed description of the major courses offered by the DEOMI is at Appendix 5.

⁸ The Marine Corps recently sent 16 active duty enlisted personnel to the 4-week course for Reserve EO advisors, which is a condensed version of the 15-week program.

One of the DEOMI goals is to "provide training for Armed Forces personnel who advise commanders and are assigned equal opportunity responsibilities in accordance with established criteria." The table below shows the number of graduates from the 15-week EO advisor course over the last five years.

1989 - 1993					
RANK	ARMY	NAVY	AIR FORCE	MARINE CORPS	TOTAL
E-4			4		4
E-5		2	49		51
E-6	38	55	49		142
E-7	738	56	6		800
E-8	29	25			54
E-9		13			13
O-3	14	5	2		21
O-4	4	1	1	1	7
O-5	1	1			2
TOTAL	824	158	111	1	1,094

The Services send the majority of officers who are assigned to equal opportunity billets to the DEOMI two-week EO Program Orientation for Managers course. The chart below shows the number of officers who attended this course over the last five years.

1989 - 1993					
RANK	ARMY	NAVY	AIR FORCE	MARINE CORPS	TOTAL
O-1	1	1	6	2	10
O-2	1	3	2	1	7
O-3	8	36	37	7	88
O-4	10	10	38	11	69
O-5	4	6	26	2	38
O-6	2				2
TOTAL	26	56	109	23	214

We interviewed 65 DEOMI graduates currently serving as EO advisors: 40 Army, 15 Navy, and 10 Air Force, the majority of whom were enlisted personnel. The EO advisors told us that the training they received adequately prepared them for their jobs.

EO Advisor Rank

As the preceding tables clearly indicate, the typical EO advisor is enlisted and in the rank of E-5 through E-8. The profile of EO advisors we interviewed generally reflected the same rank demographics. Although enlisted personnel also attend the two-week EO Program Orientation for Managers, the vast majority of attendees are officers.

Interviews of the EO advisors, particularly those in the rank of E-5 and E-6, indicated that many believed their low rank was a barrier to effective communication with the commanders they advise. They stated they were unable to obtain the confidence and support required to fulfill their roles and responsibilities.⁹ Regardless of rank, several EO advisors indicated they did not have the direct access to commanders as their responsibilities required. Nonetheless, of the 16 lower echelon commanders and executive officers we interviewed, all voiced high regard for the services and support provided by their respective EO advisors.

We did not further compare the roles and responsibilities of EO program managers with those of EO advisors or assess the level of interface each position may require with senior leadership officials. Nonetheless, experience tells us that functional advisors to commanders such as Inspectors General, Judge Advocates, Chaplains and Chiefs of Military Police, are generally officers. The Services may need to reassess the roles of EO advisors to determine whether their rank is sufficient to be credible with senior leadership officials.

Related to that issue was the long-term benefit derived from the training. For example, in the Army and Navy, assignment as an EO advisor is a two to three-year special duty assignment after which personnel return to their primary career fields. For Air Force personnel, equal opportunity is a designated career field where knowledge and expertise may be developed over time. A number of Army and Navy EO advisors indicated that the tour length assigned as an EO advisor was insufficient to gain any real depth or breadth of expertise.

EO Advisors as Investigators

As a matter of policy, all Services prohibit EO advisors from conducting investigations, but allow them to conduct informal inquiries, the purpose of which is to determine if the allegations have merit and warrant further investigation by an inquiry officer. Nonetheless, we reviewed 55 informal inquiries conducted by EO advisors that served as the sole basis for command action without further inquiry by an appointed inquiry officer. In practice, Air Force EO advisors conduct far more informal inquiries than do the EO advisors in the other Services.

Of the 39 informal inquiries conducted by Air Force EO advisors, we found 37 (95 percent) adequate. Further, the allegations were substantiated in 28 (72 percent) of the

⁹ The inspection conducted by the Naval Inspector General found similar findings regarding Navy EO advisors.

inquiries without further inquiry by an appointed officer.¹⁰ Of 12 inquiries conducted by Army EO advisors, we found 5 (42 percent) adequate, and 3 where allegations were substantiated. Of 4 inquiries conducted by Navy EO advisors, we found 2 were adequate and none where the allegations were substantiated.¹¹ Two of the Army EO inquiries resulted in nonjudicial punishment proceedings and one Navy case was dismissed at Captain's Mast.

The Air Force currently requires coordination and review of equal opportunity investigations by an EO advisor, and pending revisions to Army regulations will also include that requirement. Marine Corps regulations require coordination with an EO advisor before an investigation is initiated.

E. Military Department Initiatives

The Services have initiated improvements in military equal opportunity programs.

The Navy has developed and implemented the Informal Resolution System which promotes individual responsibility and accountability as the first step in resolving interpersonal conflict. The accompanying handbook disseminated to all Navy and Marine Corps personnel outlines key steps that each individual should take depending on his or her respective roles, i.e., the "recipient" of offensive or harassing behavior, the "offending person," a "third party," and the "supervisor." If the individuals apply principles contained in the Informal Resolution System handbook and are unsuccessful in resolving the conflict, then they may use established formal complaint channels. The Navy has also developed a handbook and investigator's guide that specifically addresses how to conduct investigations of allegations of sexual harassment.

The Army has restructured its EO complaint processing to require documented feedback to complainants and mandatory coordination and review of investigations by EO advisors. Additionally, the Army has placed officer personnel in EO advisor billets at division and corps level and developed an equal opportunity handbook for commanders.

The Air Force recently tasked the Inspector General to conduct and oversee EO investigations.

The Marine Corps recently assigned its first full-time EO advisors to 16 installations to provide information, assistance and advice to commanders. The Marine Corps is also implementing the Navy Informal Resolution System and has revised its equal opportunity manual, developed a commander's handbook for processing equal opportunity complaints, and developed a new reporting and tracking system for discrimination complaints.

¹⁰ We found corrective action included five processed as nonjudicial punishment under the UCMJ and 23 resulted in administrative actions such as nonpunitive letters of reprimand, unfavorable information files or control roster action.

¹¹ There was insufficient documentation to make a determination of adequacy in three Army cases and one Navy case.

VI. CONCLUSIONS

We concluded:

- o The majority of investigations of equal opportunity complaints were sufficiently thorough to confirm or refute the allegations.
- o There is a lack of feedback and follow-up after the completion of investigative and disciplinary actions.
- o The lack of standard definitions results in inconsistent analysis of discrimination complaints and precludes accurate reporting.
- o Interviews with EO advisors suggested their rank and experience may not be commensurate with the level of assigned responsibility and may serve as a barrier to effective communication with the commanders they advise.
- o The Services have initiated improvements in military equal opportunity programs.

VII. RECOMMENDATIONS

We recommend that the Assistant Secretary of Defense (Personnel and Readiness):

- o Require documented feedback to complainants regarding the outcome of investigations of their complaints to the extent allowed under the Privacy Act.
- o Require documented follow-up to determine the effectiveness of corrective action taken and to detect and deter reprisal.
- o Establish standard definitions for types of discrimination and other terms unique to this area for use within the DoD.
- o Establish recommended criteria and rank qualifications for equal opportunity program billets throughout the DoD.

Appendices

1. Investigation Review Criteria
2. DoD Directive 1350.2 definitions
3. Service definitions
4. Services Roles and Responsibilities of EO Advisors
5. DEOMI Courses and Number of Graduates
6. Corrective Action Table

APPENDIX 1
EO INVESTIGATION REVIEW CRITERIA

- 1. Date of review:**
- 2. Service: Army, Navy, Air Force, Marine Corps**
- 3. Location of files:**
- 4. Complainant name/case number/identifier:**
- 5. Date complaint filed:**
- 6. Date investigation initiated:**
- 7. Date investigation completed:**
- 8. Type/authority for investigation:**
- 9. Complainant and Alleged Offender demographics: rank, gender, ethnic group, age, race**
- 11. Complaint factors:**
 - a. Same chain of command? Different chain of command?**
 - b. Conduct occurred on/off base? On/off duty?**
 - c. Type of EO complaint: race, religion, gender, national origin, age, sexual harassment, ethnicity and color.**
 - d. Nature of allegations: gestures, verbal, physical, personnel action, other.**
 - e. Allegations were: substantiated, partially substantiated, unsubstantiated.**
- 12. Inquiry officer (IO) factors:**
 - a. Who conducted investigation--commander, appointed officer, EO advisor, Inspector General?**
 - b. Did the appointment of the IO comply with governing regulations? What process was used to select the IO?**
 - c. IO demographics:**
 - d. Was the IO outside the rating chain of command of the parties to the complaint?**
 - e. Was the IO previously experienced in conducting investigations?**
 - f. What training/guidance, if any, was provided to the IO? Did it include legal advice? Technical advice from DEOMI trained EO specialist? other EO advisor? Explain.**
 - g. Did the IO have or obtain a working knowledge of DoD/Service EO policy prior to conducting the investigation?**
- 13. Investigation factors:**
 - a. Were all allegations thoroughly addressed? If not, explain:**
 - b. Is there any relevant information the complainant submitted the IO did not include or address?**
 - c. Did the investigating agency/IO define the issues subject to investigation? If so, were they properly defined so as not to limit the full scope of the complaint?**
 - d. Was the complainant interviewed at the beginning of the investigation?**
 - e. Was the complainant kept informed of the status of the complaint/investigation?**
 - f. Was the alleged offender interviewed?**
 - g. Were witnesses listed by the complainant interviewed?**
 - h. Were witnesses listed by the alleged offender interviewed?**
 - i. Were any key witnesses not interviewed? Explain**
 - j. Is there documentation of witnesses' testimony, i.e., summarized, taped verbatim, statement?**
 - k. Were witnesses given the opportunity to sign or otherwise validate their summarized testimony as an accurate representation of what they said?**
 - l. Was the testimony taken under oath?**
 - m. Does the investigation include a thorough review of the circumstances under which the alleged discrimination occurred?**

- n. Did the investigation include an analysis of how the victim was treated compared to others within the complainant's demographic group and with those of other demographic groups?
- o. Did the investigation identify any related policies or practices or issues that may constitute, or appear to constitute, discrimination even though they may not have been raised by the complainant?
- p. If discrimination and/or the allegations were unsubstantiated, were any management deficiencies identified that may have contributed to the allegations addressed and corrected?
- q. Is there documentation of the IO's questions? If so, were the questions worded in such a manner to address specifically the allegations? If there is no documentation of the questions, do the responses specifically address the allegations?
- r. Did the IO clearly and objectively present the facts of the case?
- s. Are the opinions of the IO clearly identified as such and distinct from the factual and documentary evidence?
- t. Is there any evidence of bias (a highly personal and unreasoned distortion of judgment) by the IO?
- u. Is there any evidence the complainant rather than the complainant was investigated?
- v. Are the conclusions sound, logical and supported by the facts?
- w. Are the recommendations, if present, appropriate for the circumstances?
- x. Was there a legal review of the report? If so, was the report found legally sufficient?
- y. Was an EO functional review of the report conducted at any level for adherence to DoD EO policy and definitions? If so, was the review by a DEOMI-trained EO specialist? or other EO trained advisor?
- z. Did the findings and the report conform to DoD EO policy and definitions? Explain.
- aa. Were there deficiencies, discrepancies, incongruities or nonconcurrences in the findings, conclusions or recommendations? Were they noted and corrected? Explain.
- bb. Is there any evidence that the conclusions were based on an erroneous interpretation of law or regulation or misapplication of established policy, or constitute a precedential nature involving new or unreviewed policy consideration that may have effects beyond the actual case at hand?
- cc. Were essential documents relevant to a fair determination of the underlying allegations contained in the file?

14. Corrective action

- a. What corrective action, if any, was taken?
- b. Is corrective action documented in the case file?
- c. Was there any follow-up regarding the effectiveness of the corrective action taken?

15. Responses to complainants/subjects

- a. Was a response provided to the complainant? Was it written? Verbal? Was feedback documented in the case file?
- b. Did the response adequately address the complainant's allegations?
- c. Was there verbal or written advisement to the complainant to report any reprisal taken against them for filing an EO complaint?
- d. Was the subject/alleged offender advised of the outcome?

16. Appeal and redress options

- a. Was the complainant advised of appeal and/or redress options?
- b. Did the complainant seek appeal or redress of the outcome of the complaint?
- c. Did the complainant present new and material evidence not readily available during the investigation?
- d. Did any appeal or redress authority find an erroneous interpretation of law or regulation or misapplication of established policy, or that the conclusions were of a precedential nature involving new or unreviewed policy consideration that may have effects beyond the actual case at hand?
- e. Did the appeal or redress authority adequately and appropriately consider the complainant's request for further review?

APPENDIX 2

Sexual harassment is "a form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career, or
- b. submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or
- c. such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence or affect the career, pay or job of a military member or civilian employee is engaging in sexual harassment.

Similarly, any military or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures or physical contact of a sexual nature is also engaging in sexual harassment."

DoD Directive 1350.2, Military Equal Opportunity Program

The definition for discrimination is not worded as explicitly, nor does it provide any context or conditions as does the definition for sexual harassment:

Discrimination is the "Illegal treatment of a person or group based on handicap, race, color, national origin, age, religion or gender."

DoD Directive 1350.2, Military Equal Opportunity Program

APPENDIX 3

TERMS FOR DISCRIMINATION AS DEFINED BY EACH SERVICE

o Institutional Discrimination: *Different treatment* of individuals in an organization which: (a) occurs based on race, color, religion, gender or national origin; (b) results from the normal functioning of the organizations; (c) *operates to the consistent disadvantage* of a particular group. (Army Regulation 600-20, Army Command Policy)

o Arbitrary Discrimination: any action that *unlawfully or unjustly results in unequal treatment* of persons or groups based on age, color, national origin, race, ethnic group, religion or sex and for which distinctions are not supported by legal or rational considerations.

(1) Disparaging Terms: *terms used to degrade or infer negative statements* pertaining to age, color, national origin, race, ethnic group, religion or sex. Such terms include insults, printed material, visual material, signs, symbols, posters or insignia. *The use of such terms constitutes arbitrary discrimination.*

(2) Personal Discrimination: the action taken by an individual to *deprive a person or group of a right* because of age, color, national origin, race, ethnic group, religion or sex. Such discrimination can occur overtly, covertly, intentionally or unintentionally.

o Institutional (Systemic) Discrimination: the action by an institution (or system), through its policies and procedures, that *deprives a person or group of a right* because of age, color, national origin, race, ethnic group, religion or sex. (Air Force Regulation 30-2, Social Actions Program)

o Discrimination: an act, policy or procedure that arbitrarily *denies equal treatment* to an individual or a group or individuals because of race, color, religion, gender, age or national origin. (Naval Operations Instruction 5354.1C, Navy Equal Opportunity)

o Discrimination: an act, policy, or procedure that arbitrarily *denies equal opportunity* because of race, color, religion, sex, age or national origin to an individual or group of individuals. (Marine Corps Order P5354.1, Marine Corps Equal Opportunity Manual)

APPENDIX 4

ROLES AND RESPONSIBILITIES OF EO ADVISORS

ARMY: Reference: AR 600-20

- the commander will be in the principal EO advisor's rating chain
- the EOA must understand and articulate DoD and Department of the Army policies concerning EO
- recognize and assess indicators of institutional and individual discrimination in organizations
- recognize sexual harassment in both overt and subtle form
- recommend remedies appropriate to reduce or prevent discrimination and sexual harassment
- collect, organize and interpret demographic data concerning all aspects of EO climate assessment
- assist commanders in the development of realistic affirmative action plans and monitor progress
- train equal opportunity representatives to assist commanders in meeting their EO responsibilities
- conduct or organize training pertaining to equal opportunity, discrimination and sexual harassment
- receive and act upon individual complaints.

NAVY: Reference: OPNAVINST 5354.1C, which states "commanders should use EOPSs to:

- conduct EO training
- monitor effectiveness of command EO programs
- assist in conduct of command assessments
- participate in CMEO [command managed equal opportunity] inspection of subordinate commands."

AIR FORCE: Reference: AFR 30-2

- advise commanders on equal opportunity matters
- help commanders anticipate, prevent and eliminate EO factors that detract from mission readiness
- conduct unit staff assistance visits, interviews, observations, surveys and climate assessments
- process complaints, conduct complaint clarifications
- apprise commanders of discriminatory circumstances when no complaint has been submitted
- serve as the focal point for the affirmative actions plan
- liaison with advisory councils, special interest groups and on/off-base agencies involved in EO issues
- brief commanders/first sergeants on policies, procedures, the base and unit EO climates
- conduct human relations education
- conduct trend analysis using security police, IG, military personnel office and other agency EO data
- act as technical advisors to investigation officers and coordinate on the completed investigations
- provide the senior installation commander a written assessment of the on/off base EO climate

APPENDIX 5

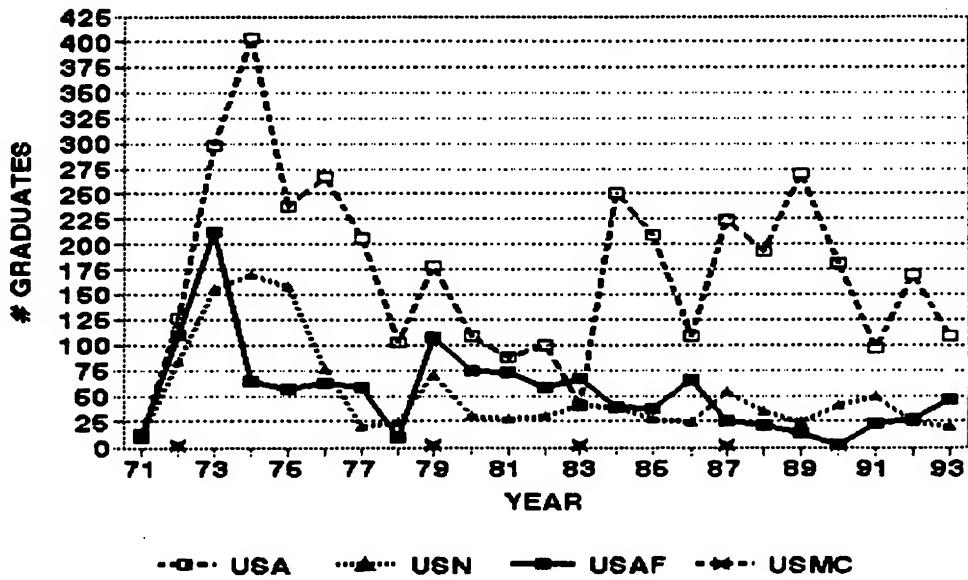
DEFENSE EQUAL OPPORTUNITY MANAGEMENT INSTITUTE

The DEOMI currently offers a 15-week curricula that develops a base of knowledge and skills that allows graduates to assess human relations climates in the organizations they serve, and to provide advice and assistance to commanders to prevent, reduce or eliminate discriminatory practices. Graduates are qualified to serve as full-time EO staff advisors. Equal opportunity advisors receive nearly 500 academic hours of training in communications, individual and group behavior, studies of major ethnic groups, aspects of power and discrimination, equal opportunity (EO) staff advisor skills, and Service specific studies.

The DEOMI also offers a 2-week EO Program Orientation for Managers course designed to provide an overview of the Defense EO program. It is not designed to train EO staff advisors. The course addresses topics such as personal and organizational values, prejudice and discrimination, racism and sexism, sexual harassment, affirmative action concepts, unit climate assessments and Service specific program management. Graduates will have a greater understanding of EO issues and the action strategies necessary for effective management of an EO program and EO staff advisors, but are not qualified to serve as EO staff advisors.

The Services identify military personnel to attend DEOMI for training as equal opportunity advisors (EOAs). Prerequisites include a record of outstanding performance, exceptional military bearing and proficient verbal and written skills. The chart below depicts DEOMI attendance from 1971 through 1993.

DEFENSE EQUAL OPPORTUNITY MANAGEMENT INSTITUTE 16-WEEK RESIDENT PROGRAM



APPENDIX 6 - CORRECTIVE ACTION TABLE

EO CATEGORIES: (G) GENDER; (R) RACE; (AD) ARBITRARY DISCRIMINATION; (SH) SEXUAL HARASSMENT; (NO) NATIONAL ORIGIN
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 (I) INCONCLUSIVE; (LOR) LETTER OF REPRIMAND; (PHYS) PHYSICAL; (REC) RECOMMENDED; (UIF) UNFAVORABLE INFORMATION FILE

#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
1	USAF	E3	O6	R	ADMIN	NO		
2	USAF	E2	E3	R,AD	WRITTEN	NO		
3	USAF	E5	E6	SH	VERBAL	NO	VERBAL REPRIMAND	
4	USAF	E7	O5	R	ADMIN	NO		
5	USAF	E7	O4	R	ADMIN	NO		
6	USAF	E4	N/A	R	OTHER	NO	ORGANIZATIONAL FIXES	
7	USAF	E4	E6	SH	PHYS	YES	LOR; UIF	
8	USAF	E5	O6	R, G	VERBAL	NO		
9	USAF	E4	E3	R	VERBAL	NO		
10	USAF	E4	E4	SH	PHYS	YES		ART 134; REDUCED RANK; 45 DAYS EXTRA DUTY
11	USAF	E5	E5	SH	PHYS	YES		ART 134; FF \$100X2; SUSPENDED REDUCTION IN RANK
12	USAF	E5	E4	R, G	VERBAL	YES	LOR	
13	USAF	E1	E3	R	VERBAL	YES	VERBAL REPRIMAND	
14	USAF	E6	E8	G	ADMIN	NO	VERBAL COUNSELING; REMOVAL As NcoIC	
15	USAF	E5	E6	No	ADMIN	NO	NONE	
16	USAF	E3	E7	SH	PHYS	YES	LOR	
17	USAF	E7	O5	R, G	ADMIN	NO		
18	USAF	E4	E7	SH	VERBAL	NO	YES	ART 134; REDUCED RANK

APPENDIX 6 - CORRECTIVE ACTION TABLE

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#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
19	USAF	E7	UNK	SH	OTHER	NO	S.H. TRAINING;CLIMATE SURVEY	
20	USAF	E5	E7, 04	R	ADMIN	NO		
21	USAF	E3	UNK	R, No	ADMIN	NO		
22	USAF	E6	?	R	ADMIN	NO		
23	USAF	E4	UNK	R, SH	VERBAL	NO	COMPLAINANT REASSIGNED	
24	USAF	E3	E5	SH	PHYS	YES	Loc	
25	USAF	O1	E7	SH	VERBAL	YES	LOR; UIF	
26	USAF	E3	E5	SH	PHYS	YES	LOR; UIF	
27	USAF	O1	O4	SH	VERBAL	YES	LTR OF COUNSELING;GAINING CMD NOTIFIED	
28	USAF	O2	O5	G	ADMIN	YES	LOR; RELIEVED OF COMMAND	
29	USAF	O3	O6	G	ADMIN	NO		
30	USAF	E1	E5	SH	PHYS	YES	LOR, SH TRAINING FOR UNT	
31	USAF	E4	E5	SH	PHYS	YES	LOR, UIF	
32	USAF	E7	UNK	R, No	ADMIN	NO		
33	USAF	O3	O5	R, AD	VERBAL	NO		
34	USAF	E5	E6	R	ADMIN	NO	COUNSELING; INC Eo TRAINING, NCO RESP	
35	USAF	E5	E6	R	ADMIN	NO	REORGANIZATION;COUNSELING	
36	USAF/USA	E3	E5	SH	PHYS	YES	FF\$900x2(\$400 SUSPENDED);45 DAYS EXTRA DUTY;LOR	

APPENDIX 6 - CORRECTIVE ACTION TABLE

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#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
37	USAF	E1	E4	SH	VERBAL	YES	LOR; UIF	
38	USAF	E4	E7	R,AD	VERBAL	YES	VERBAL REPRIMAND	
39	USAF	E4	E4	R,AD	VERBAL	YES	LOR; DENIED REENLISTMENT; HUMAN RELATIONS/DRUG ALCOHOL TRAINING; MENTAL HEALTH EVALUATION	
40	USAF	E4	E4	SH	VERBAL	NO	COUNSELING RECOMMENDED BUT Not DOCUMENTED	
41	USAF	E2	E3	SH	VISUAL	YES	LOR	
42	USAF	E3	E6	SH,AD	VERBAL	YES		ART 15; SUSPENDED REDUCTION TO E-5; FINE
43	USAF	E1	E6	SH	PHYS	No	NONPUNITIVE COUNSELING	
44	USAF	E3	E1	SH	VERBAL	NO	LOR For INAPPROPRIATE BEHAVIOR	
45	USAF	E2	E1	SH	VERBAL	YES	LOR; RETURNED TO PHASE I TRAINING	
46	USAF	E7	E6	G,AD	VERBAL	YES	LOR	
47	USAF	E7*	E3	R	VERBAL	YES	LOR; UIF	
48	USAF	O3	E7	R,AD	OTHER	YES	LOR	
49	USAF	E6	O3	R	ADMIN	NO	UNIT ADDRESSED ISSUE OF FAVORITISM	
50	USAF	E4	E5	SH	VERBAL	YES	REMOVAL FROM SUPERVISORY POSITION	ART 93; REDUCED TO E-4; FF \$400X2; 30 DAYS EXTRA DUTY.
51	USAF	E1	E3	SH	PHYS	YES	LOR; UIF	
52	USAF	E4	E8	G,AD	VERBAL	YES	LOR, CONTROL ROSTER, CANCELLED NCO ACADEMY	
53	USAF	E3	E5	R,AD	VERBAL	YES	LOR	
54	USAF	E1	GS9	SH	PHYS	No		

APPENDIX 6 - CORRECTIVE ACTION TABLE

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#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
55	USAF	E2	E5	SH	PHYS	YES	COUNSELED; REMOVAL FROM INSTRUCTOR DUTY	
56	USAF	DEP	E4	SH	PHYS	YES	LOR, UIF	
57	USAF	E5	E6	SH	VERBAL	NO		
58	USAF	E2	E1	G,AD	VERBAL	YES	LOR, UIF, PHASE I SETBACK	
59	USAF	E4	CIV	R	HSG	NO	WARNING	
60	USAF	DEP	DEP	G,AD	VERBAL	YES	COUNSELING OF ACTIVE DUTY MEMBER & SPOUSE	
61	USAF	DEP	E4	R,AD	VERBAL	YES	LOR, UIF, CONTROL ROSTER, REMOVED FROM SUPERVISORY POSITION	
62	USAF	E7	E3	SH	VERBAL	YES	LOR, UIF	
63	USAF	E5	E7	SH	VERBAL	YES	LOR, UIF	
64	USAF	E2	E1	SH	PHYS	YES	LOR, UIF	
65	USAF	E5	E7	G,AD	VERBAL	YES	LOR	
66	USAF	E1	E5	SH	PHYS	NO	LOR	
67	USAF	E5	E5	SH	PHYS	YES		VACATED PREVIOUS SUSPENDED REDUCTION TO E4
68	USAF	E4	E4	SH	PHYS	PARTIAL		ART 15; UIF
69	USAF	E1	E1	SH	VERBAL	YES	LOR; REMOVED AS STUDENT LEADER	
70	USAF	E1	E4	SH	PHYS	NO	LTR OF ADMONISHMENT	
71	USAF	NAF4	E6	SH	PHYS	YES	LOR	
72	USAF	E2	E1	G,AD	VERBAL	YES	DISCHARGE FOR PATTERN OF MISCONDUCT	

APPENDIX 6 - CORRECTIVE ACTION TABLE

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 (I) INCONCLUSIVE; (LOR) LETTER OF REPRIMAND; (PHYS) PHYSICAL; (REC) RECOMMENDED; (UIF) UNFAVORABLE INFORMATION FILE

#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
73	USAF	E4	E3	SH	VERBAL	YES	LOR, UIF, PROMOTION WITHHELD FOR 6 Mos	
74	USAF	E3	E7	SH	OTHER	YES	LOR	
75	USAF	E1	E1	G,AD	VERBAL	YES	LOR	
76	USAF	E1	E1	R,AD	VERBAL	YES	LOR, UIF	
77	USAF	E6	E9	SH	VERBAL	YES	VERBAL ADMONISHMENT	
78	USAF	E4	E7	SH	VERBAL	YES	LOR, UIF, CONTROL ROSTER	
79	USAF	E3	E6	SH	PHYS	No	VERBAL COUNSELING	
80	USAF	E5	E6	SH	PHYS	YES*	LOR	
81	USAF	E5	E6	SH	VERBAL	YES	LOR	
82	USAF	E2,E3,E5	E5	R, AD	VERBAL	YES	LOR, UIF, HUMAN RELATIONS TRAINING	COURT-MARTIAL, BCD, LOR, REDUCED TO E2
83	USAF	E1-E3	E5	SH	PHYS	YES	REFERRED FOR ART 32 HEARING	
84	USAF	E2-E6	E3	R,AD	VERBAL	YES	LOR, UIF, CONTROL ROSTER	
85	USAF	E2	E6	SH	PHYS	YES	LOR, CONTROL ROSTER, REMOVED FROM SUPERVISORY POSITION	
86	USAF	D/W	E4	G,AD	VERBAL	No	VERBAL COUNSELING	
87	USAF	E5	GS12	R	ADMIN	No	VERBAL COUNSELING	
88	USAF	E5	E2-E5	SH,AD	Other	No	LTRS OF COUNSELING	
89	USAF	E4	E6	SH	PHYS	YES		ART 15, UIF
90	USN	E3	E6	SH	VERBAL	YES	ADMINISTRATIVE DISCHARGE BOARD	ART 93; FF\$600; REDUCED; SUSPENDED DISCHARGE OTHC

APPENDIX 6 - CORRECTIVE ACTION TABLE

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#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
91	USN	E5	E6	R	ADMIN	PARTIAL		
92	USN	E4	E5	SH	OTHER	YES		
93	USN	E5,E4	E5	R, SH	VERBAL	PARTIAL	NONPUNITIVE LTR OF COUNSELING	DISMISSED @ CAPTAIN'S MAST
94	USN	E4	E4	R	VERBAL	YES		CAPT MAST, ART 117, RESTR,XTRADUTY,SUSP\$100X6
95	USN	E3	E4	SH	PHYS	YES		CAPT MAST, ART 128/92;LOR,45XD/R,FF520X2,RIR
96	USN	E5	E6	SH	PHYS	YES		CAPT MAST, ART 92/134,45R/45X,RIR(SUSPX6)
97	USN	E3	E9	SH	VERBAL	PARTIAL		CAPT MAST, ART 92/117, FF\$1120X2
98	USN	E1	E6	SH	VERBAL	YES		CAPT MAST, ART 134; 30R/30X,RIR
99	USN	E3	E8	R	OTHER	NO	Xo DISCUSSED ISSUE WITH MEMBER	
100	USN	E4	WG?	R	VERBAL	YES	7-DAY SUSPENSION WITHOUT PAY	
101	USN	E4	UNK	SH	ADMIN	NO		
102	USN	VAR.	E6	G	VERBAL	YES	NONPUNITIVE LTR OF CAUTION, Pg 13	CAPT MAST, ART 117, CHARGES DISMISSED
103	USN	E2	E4	R	VERBAL	NO		CAPT MAST, ART 117, CHARGES DISMISSED
104	USN	O5	O6	G	ADMIN	NO		
105	USN	E4,E6	O3	SH	PHYS	YES	REC TERMINATION OF TEMP APPOINTMENT	ADMIRAL'S MAST;ART 15,FF\$600, LOR
106	USAF/USMC	E3	E6	SH	PHYS	No*	COUNSELING OF BOTH PARTIES	
107	USMC	E5	O3	SH	VERBAL	NO	REQUEST MAST; CID FOUND INSUFFICIENT EVIDENCE	
108	USMC	E3	E9	R	VERBAL	NO	REITERATED EO POLICY TO UNIT ADMIN	

APPENDIX 6 - CORRECTIVE ACTION TABLE

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 (I) INCONCLUSIVE; (LOR) LETTER OF REPRIMAND; (PHYS) PHYSICAL; (REC) RECOMMENDED; (UIF) UNFAVORABLE INFORMATION FILE

#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
109	USMC	E3	E6	R	ADMIN	NO	EXPEDITED PENDING TRANSFER	
110	USMC	E3	E9	R	ADMIN	NO	REQUEST MAST; ADVISED OF UCMJ ROUTE	
111	USMC	E5	UNK	R, G	ADMIN	NO	REQUEST MAST; INFORMAL INQUIRY	
112	USMC	E3	E9	R	ADMIN	PARTIAL	REQUEST MAST; CONGRESS RESPONSES	NONE-MBR PENDING SPCM
113	USMC	CIV	E6	SH	PHYS	PARTIAL	COUNSELING, Eo TNG, REASSIGN COMPLAINANT	
114	USMC	E3	E4	SH	VERBAL	PARTIAL	NONPUNITIVE LOR For INAPPROPRIATE BEHAVIOR	
115	USMC	E5	E8	SH	VERBAL	NO		
116	USMC	E4	E5	SH	VERBAL	NO	COUNSELING; SERVICE RECORD ENTRIES	
117	USA	E6	E9	SH	VERBAL	YES	LOR	
118	USA	E4	E1	R	VERBAL	UNK		
119	USA	E4	E8	SH	PHYS	I	RELIEVED AS 1SGT W/o PREJUDICE	
120	USA	E6	?	G	ADMIN	UNK	ASSIGNED POSITION AS PLATOON SERGEANT	
121	USA	W2	?	R	ADMIN	NO		
122	USA	?	E5	R	VERBAL	PARTIAL		
123	USA	E4	E4	R	OTHER	YES		ART 15, LOR, 14 DAYS EXTRA DUTY/14 DAYS RESTRICTION
124	USA	E6	?	R	ADMIN	UNK		
125	USA	O3	O5,O6	G,R	ADMIN	NO		
126	USA	E5	E6,O3	G	ADMIN	NO	COUNSELING	

APPENDIX 6 - CORRECTIVE ACTION TABLE

PAGE 8

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 ABBREVIATIONS: (SVC) SERVICE; (C) COMPLAINANT; (O) OFFENDER; (CAT) EO CATEGORY; (CONF) CONFIRMED?; (DOC) DOCUMENTED; (FF) FORFEITURES; (IO) INQUIRY OFFICER;
 (I) INCONCLUSIVE; (LOR) LETTER OF REPRIMAND; (PHYS) PHYSICAL; (REC) RECOMMENDED; (UIF) UNFAVORABLE INFORMATION FILE

#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
127	USA	E2	E4	SH	PHYS	YES		BATTALION ART 15;BATTALION LOR
128	USA	E2	E7	SH	OTHER	NO		
129	USA	E4	E4	R	PHYS	I		
130	USA	E2-E3	E6	SH	PHYS	YES	REMOVED AS SUPERVISOR	PENDING
131	USA	CIV-O4	05	SH	PHYS	YES	ADMIN LOR; MBR(0-6 SEL) PUT IN FOR RET.	ART 128,134;REPRIMAND;FF\$500
132	USA	O3	O5	SH	PHYS	YES	RELIEF FOR CAUSE;REFERRAL OER;REPRIMAND	
133	USA	E4	?	R	ADMIN	NO		
134	USA	O4	O5	G	ADMIN	NO	EO CLIMATE SURVEY	
135	USA	E5	E7	SH	PHYS	I	NONPUNITIVE LTR OF ADMONITION	
136	USA	E1-E5	E6	SH	VERBAL	YES	G.O. LOR (OMPF);RECOMMENDED BAR TO REENLISTMENT	
137	USA	E4	WSS	R	ADMIN	NO	FIX ORGANIZATION & COMMUNICATION DEFICITS	
138	USA	E5	E6	SH	VERBAL	YES	UNK, TO RECOMMENDED FIELD GRADE ART 15, INVOLUNTARY DISCHARGE	
139	USA	E5	E8,O3	R	ADMIN	NO	Eo SURVEY	
140	USA	E4	E8	SH	VERBAL	YES	UNK, Io RECOMMENDED UCMJ, RELIEF, BAR TO REENLISTMENT, ACADEMY REDLINE	
141	USA	E5	O2	SH	VERBAL	YES	Eo SENSING SESSIONS/TRAINING/SURVEY/COUNCIL	
142	USA	E4	?	G	ADMIN	YES		
143	USA	E4	O4	R	VERBAL	NO	NONE, Io RECOMMENDED INCREASE EO AWARENESS, TIMELY SUBMISSION OF COMPLAINTS	
144	USA	E6	O3	G,R	OTHER	NO		

APPENDIX 6 - CORRECTIVE ACTION TABLE

PAGE 9

EO CATEGORIES: (G) GENDER; (R) RACE; (AD) ARBITRARY DISCRIMINATION; (SH) SEXUAL HARASSMENT; (NO) NATIONAL ORIGIN
ABBREVIATIONS: (SVC) SERVICE; (C) COMPLAINANT; (O) OFFENDER; (CAT) EO CATEGORY; (CONF) CONFIRMED?; (DOC) DOCUMENTED; (FF) FORFEITURES; (IO) INQUIRY OFFICER;
(I) INCONCLUSIVE; (LOR) LETTER OF REPRIMAND; (PHYS) PHYSICAL; (REC) RECOMMENDED; (UIF) UNFAVORABLE INFORMATION FILE

#	SVC	C	O	CAT	TYPE	CONF?	ADMINISTRATIVE	UCMJ
145	USA	E5	E7, O4	R	ADMIN	NO		
146	USA	E4	E4	R	VERBAL	UNK	NONE-OFFENDER HAD ALREADY SEPARATED	
147	USA	E5	O3	R	ADMIN	NO		
148	USA	E6	E9	R	VERBAL	YES	GEN OFFICER LOR	
149	USA	E3	E8	SH	PHYS	YES	ASSIGNMENT TO HEADQUARTERS CANCELLED; NCOER DOCUMENTED; LOR	
150	USA	E7	O3	SH	OTHER	YES	UNK, IO RECOMMENDED RELIEF FOR CAUSE, REPRIMAND	
151	USA	E4	E7	SH	OTHER	NO	UNK, IO RECOMMENDED LTR OF ADMONISHMENT	
152	USA	E4-E6,CIV	E7	SH	PHYS	YES	RELIEVED AS FIRST SGT; LOR IN OFFICIAL MILITARY PERSONNEL FILE	

DISTRIBUTION:

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Inspector General, Marine Corps

Commandant, Defense Equal Opportunity Management Institute

Commanding Officers of Installations Visited

Suggested Timelines for Complaints Investigations

Tab 11

Timelines For Investigations

Within

3 Days Complaints, except those filed with IG, must be acted upon in three working days, complaints filed with an agency against a member of the chain of command will be referred to the next higher command.

18 Days Investigating Officer (IO) appointed by the commander has eighteen days to complete the fact finding, legal review and commander review sections of the investigation.

 7 Days Investigating Officer investigates the facts

 4 Days EO Review

 4 Days Legal Review

 3 Days Commander Review

7 Days Commander meets separately with victim to discuss written outcome and results of investigation. At this time the commander will also give complainant the outcome in writing.

30 to 45 Days After 30 days following the final decision of the complaint, an assessment and complainant interview are conducted by the equal opportunity advisor on all complaints (substantiated or unsubstantiated) to determine the effectiveness of any corrective actions taken to detect or deter any incidents of reprisal. In the event of reprisal or when discriminating and harassing behavior persists, the EO advisor must notify the commander.



Defense Equal
Opportunity
Council

Report of the
Task Force
on
Discrimination and
Sexual Harassment

May 1995
Volume II

The Pentagon
Washington, DC

Defense Equal Opportunity Council



Report of Task Force on Discrimination and Sexual Harassment

May 1995

Volume II: Additional Materials

- A. List of Task Force Members**
- B. Summaries of Task Force Briefings**
- C. Chronology of Discrimination and Sexual Harassment Policy within the Federal Government and the Department of Defense**
- D. Annotated Bibliography of Reference Materials on Sexual Harassment in the Files of the ODASD(EO)**
- E. DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program," December 23, 1988**
- F. DoD Instruction 1350.3, "Affirmative Action Planning and Assessment Process," February 29, 1988**
- G. Summary of Current Professional Military Education EO Training**

List of Task Force Members

Tab A

**DEFENSE EQUAL OPPORTUNITY COUNCIL
TASK FORCE ON DISCRIMINATION AND SEXUAL HARASSMENT**

Chairs

Dr. Sheila Widnall
Secretary of the Air Force
Pentagon, Room 4E871
Office: (703) 697-7376
Fax: (703) 695-8809

Dr. Edwin Dorn
Under Secretary of Defense for Personnel
and Readiness
Pentagon, Room 3E764
Office: (703) 695-5254
Fax: (703) 693-0171

Panel Members

Ms. Deborah Lee
Assistant Secretary of Defense
(Reserve Affairs)
Pentagon, Room 2E520
Office: (703) 697-6631
Fax: (703) 693-5371

****Mr. Stephen W. Preston**
Principal Deputy General Counsel
Pentagon, Room 3E980
Office: (703) 697-7248

Ms. Sara Lister
Assistant Secretary of the Army (M&RA)
Pentagon, Room 2E594
Office: (703) 697-9253
Fax: (703) 614-7975

****Mr. Frederick F.Y. Pang**
Assistant Secretary of the Navy (M&RA)
Pentagon, Room 4E788
Office: (703) 697-2179
Fax: (703) 614-3889

****Mr. Gilbert F. Casellas**
General Counsel of the Air Force
Pentagon, Room 4E874
Office: (703) 697-0941
Fax: (703) 693-9355

****VADM R.J. Zlatoper, USN**
Deputy Chief of Naval Operations
Navy Annex
Office: (703) 614-1101
Fax: (703) 693-1746

**** Standing members were replaced by new members due to job position changes.**

****LtGen Robert Johnston, USMC**
Deputy Chief of Staff (M&RA)
4020 Headquarters USMC
Office: (703) 614-8003
Fax: (703) 614-3812

Deputy Chief of Staff, Personnel, USAF
Pentagon, Room 4E194
Office: (703) 697-6088
Fax: (703) 614-5436 or
(703) 697-0903

****LtGen Billy Boles, USAF**
MG Wallace C. Arnold, USA
Deputy Chief of Staff for Personnel, USA
Pentagon, Room 2E736
Office: (703) 695-6003
Fax: (703) 693-6607

Ms. Katherine Archuleta
Deputy Chief of Staff
U.S. Department of Transportation
400 7th Street, SW
Room 10200
Washington, DC 20590
Office: (202) 366-6800
Fax: (202) 366-3956

Mr. Derek J. Vander Schaaf
DoD Deputy Inspector General
400 Army Navy Drive
Office: (703) 604-8300
Fax: (703) 693-4749

Walter Sommerville
Chief, Office of Civil Rights
U. S. Coast Guard (G-H)
2100 2nd Street, SW
Room 2400
Washington, DC 20593
Office: (202) 267-1562
Fax: (202) 267-4282

RADM Pat Tracey, J-1
Director for Manpower and Personnel, Joint
Staff
Pentagon, Room 1E948
Office: (703) 697-6098
Fax: (703) 693-1596

**** Standing members were replaced by new members due to job position changes.**

New Members

Mr. Frederick F.Y. Pang
Assistant Secretary of Defense
(Force Management Policy)
Pentagon Room, 3E785
Office: (703) 697-2086
Fax: (703) 695-4046

Ms. Judith Miller
DoD General Counsel
Pentagon, Room 3E980
Office: (703) 695-3341
Fax: (703) 693-7278

Mr. Bernard Rostker
Assistant Secretary of the Navy (M&RA)
Pentagon, Room 4E788
Office: (703) 697-2179
Fax: (703) 614-3889

VADM Frank Bowman, USN
Deputy Chief of Naval Operations (M&P)
Navy Annex
Room 2072AA
Office: (703) 614-1101

LtGen George R. Christmas, USMC
Deputy Chief of Staff (M&RA)
4020 Headquarters USMC
Office: (703) 614-8003
Fax: (703) 614-3812

LtGen Eugene E. Habiger, USAF
Deputy Chief of Staff, Personnel, USAF
Pentagon, Room 4E194
Office: (703) 697-6088
Fax: (703) 614-5436

Ms. Florence Madden
Assistant General Counsel of the Air Force
Pentagon, Room 4C948
Office: (703) 695-5663
Fax: (703) 695-3355

**** Standing members were replaced by new members due to job position changes.**

Task Force Support

Mr. William Leftwich
Deputy Assistant Secretary of Defense
(Equal Opportunity)
Room 3D285
Office: (703) 693-2693

Mr. Claiborne D. Haughton Jr.
Principal Director, Office of the Deputy
Assistant Secretary of Defense for
(Equal Opportunity)
Pentagon, Room 3A272
Office: (703) 695-0105
Fax: (703) 695-4619

Ms. Lori Hendricks
Executive Secretary
Pentagon, Room 4C759
Office: (703) 695-6492
Fax: (703) 693-6708

Ms. Adrienne Goins
Executive Secretary
Pentagon, Room 3C980
Office: (703) 697-0617
Fax: (703) 697-3403

Mr. James Love
Pentagon, Room 3A272
Office: (703) 697-8361
Fax: (703) 695-4619

Mr. Jerry Anderson
Pentagon, Room 3A272
Office: (703) 697-8361
Fax: (703) 695-4619

****Col John Cox, USAF**
Pentagon, Room 5C238
Office: (703) 697-4720
Fax: (703) 695-4083

New Support Member

LtCol John Andrew, USAF
Pentagon, Room 4D865
Office: (703) 695-1323

**** Standing members were replaced by new members due to job position changes.**

Summaries of Task Force Briefings

Tab B

**DEFENSE EQUAL OPPORTUNITY COUNCIL
TASK FORCE ON DISCRIMINATION AND HARASSMENT**

SUMMARY OF BRIEFINGS

Week 1	Friday	May 13	2:00 - 3:00 p.m.	Executive Session I - Preparation for Task Force Report
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Dr. Widnall opened the meeting and asked for introductions by task force panel members. She explained to the members the administrative operations of the task force supported by a coordinating staff. She went on to suggest that the coordinating staff create a matrix to show the differences between each Service's complaints processing system. The office of the deputy assistant secretary of defense for equal opportunity was asked to establish and support a reference library with an annotated bibliography for members use.

The group then focused on its mission and the briefings needed to fulfill its mission. The co-chairs explained that, although the task force was established as part of the Department's broad sexual harassment policy action plan, its mission is to examine the Services' discrimination complaints processing systems to include both sexual harassment and discrimination. All agreed that the DoDIG should begin briefing the group, followed by Service and Coast Guard briefings (to include reserve components).

The meeting concluded with the advisability of hearing testimony from alleged victims of sexual harassment and discrimination. At this time, the group was unable to reach consensus, and planned to re-visit this issue at a later date.

Week 2	Thursday	May 19	10:00 - 11:00 a.m.	DoD IG Briefing
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DODIG

Michael Suessmann, Assistant Inspector General for Departmental Inquiries, briefed the Task Force on the work of the Office of the DoD Inspector General in areas related to investigations of discrimination and sexual harassment. He stated:

Two areas in particular are the focus of most of the criticisms and complaints we have seen. . . . first, the lack of established appeal rights and procedures . . . and second, issues relating to protection of complainants from reprisal.

Mr. Suessmann discussed several additional issues such as standards for adequacy of investigations, feed-back and follow-up, uniform definitions, and utilization of EO advisors.

**Week 3 Tuesday May 26 3:30 - 5:00 p.m. Service Briefing I (USN)
(Reserve Components)**

USN

Frederick F. Y. Pang, Assistant Secretary of the Navy for Manpower and Reserve Affairs, briefed the Task Force on the Navy's equal opportunity program and its discrimination complaints processing system. He emphasized the collaborative nature of the Navy system and focused on six key elements: the availability of both formal and informal mechanisms; multiple complaint channels; prevention programs; annual, Navy-wide training; the Navy Equal Opportunity/Sexual Harassment Survey; and the victims' advocate program.

**Week 4 Wednesday June 1 9:30 - 11:00 a.m. Service Briefing II (USMC)
(Reserve Components)**

USMC

BG Les Palm, USMC, Director, Manpower Plans and Policy Headquarters, Marine Corps, briefed on the USMC's discrimination complaints process. He focused on reprisals, the USMC's sexual harassment advice line, training and utilization of EO advisors.

**Week 5 Thursday June 9 3:30 - 5:00 p.m. Service Briefing III (USA)
(Reserve Components)**

USA

Ms. Sara Lister, Assistant Secretary of the Army for Manpower and Reserve Affairs, opened the Army briefing by stressing the importance of making women equal partners in military service. Discussion during the briefing focused on Equal Opportunity climate assessment, complaint processing timelines, the Army's Equal Opportunity Hotline, feedback and confidentiality of records, the conduct of investigations, and the appeal process.

**Week 6 Wednesday June 15 9:00 - 10:30 a.m. Service Briefing IV (USAF)
(Reserve Components)**

USAF

LtGen Billy Boles, USAF (Deputy Chief of Staff, Personnel), briefed the Task Force on the Air Force's discrimination complaints process. He focused on complaint trends, personnel utilization, prevention efforts, complaint procedures, and improvements being developed. After the briefing, discussion returned to concerns about resolving certain complaints informally. Derek Vander Schaaf, Acting DoD Inspector General, explained that the Services' informal resolution processes should

not resolve allegations of rape or sexual assault, for instance. Task Force members also discussed the need for appropriate punishments.

Week 7	Monday	June 20	10:00 - 11:00 a.m.	Service Briefing V (USCG)
			11:00 - 12:00 p.m.	Service Briefing VI (NGB)

USCG

The US Coast Guard and the National Guard briefed the Task Force on their discrimination processes. Walter Somerville, Chief, Office of Civil Rights, USCG, opened the Coast Guard briefing by noting that all jobs in the Coast Guard are open to women. The Coast Guard briefer, Captain Martin Baskin emphasized formal and informal complaint processes, training initiatives, chain of command accountability, the Coast Guard's sexual harassment prevention system, and related complaint process issues.

NGB

Ms. Deborah Lee, Assistant Secretary of Defense for Reserve Affairs, opened the National Guard briefing by stating that the Task Force should remember that the Guard is different from active-duty Services: The fact that National Guard members are on duty periodically presents unique challenges. Mr. Jack Broderick, Director of Equal Opportunity, National Guard Bureau, addressed the Guard's Equal Opportunity programs and its complaint process. Discussion during and after the briefings focused on program goals. Task Force members noted that the stated, key purpose of the Coast Guard's complaint system is to make the victim whole, while the National Guard's stated goal is maintaining readiness. Although these goals seem to be different, since Service personnel are readiness assets, the goals are identical.

Week 8	Friday	July 1	9:30 - 11:00 a.m.	<u>Executive Session II</u>
				- OSD Briefing
				- Admiral Boorda
				- In Progress Review

OSD

Mr. Jerry Anderson from the newly established Office of the Deputy Assistant Secretary of Defense for Equal Opportunity [ODASD(EO)] briefed the Task Force on the DoD equal opportunity policy structure, the mission and functions of the ODASD(EO), processes for developing and monitoring civilian and military equal opportunity policies, and the role of the Office in the formulation and deliberations of the Task Force. Task Force members were informed that the Secretary of Defense, by memorandum dated March 3, 1994, established the ODASD(EO) as a focal point for DoD civilian and military EO programs. In that same memorandum, the Secretary elevated the Defense Equal Opportunity Council to emphasize management accountability for equal opportunity programs.

Admiral Boorda

Admiral Jeremy M. Boorda, Chief of Naval Operations, addressed the Task Force on July 1. He expressed his commitment to making the Navy's complaints processing system better for sailors. He also mentioned that he is eagerly awaiting the recommendations of the Task Force. He concluded by stressing the importance of handling complaints properly and establishing a record of success so that Service members will have confidence in the system.

**Week 9 Wednesday July 6 9:30 - 11:30 a.m. DEOMI
Support Services**

DEOMI

COL Ronald Joe, USA, Commandant of the Defense Equal Opportunity Management Institute (DEOMI) in the Office of the Deputy Assistant Secretary (Equal Opportunity), addressed the Task Force on two occasions. On July 6, COL Joe reviewed DEOMI's mission and goals. The school's goals are to institute a commander's equal opportunity (EO) program, to promote diversity in key leadership roles, to provide extensive EO training to all levels within the Services, and to modify behavior so that Service members treat each other with dignity and respect.

Support Services

Ms. Gail McGinn, Principal Director, Office of the DASD(Personnel Support, Families and Education), briefed the Task Force on the family support program. She explained that the Family Advocacy Program identifies and prevents spouse and child abuse. She also explained that DoD opposed the House Armed Services Committee (HASC) proposal to develop a discrimination/harassment victims' support program and place it within the Family Advocacy Program for two reasons: first, Family Advocacy is already under-funded; and second, the focus of Family Advocacy is prevention. (For more information on the outcome of the House proposal, see discussion of the HASC staffers' briefing below.)

Week 10 NO MEETING

Week 11 Thursday July 21 9:30 - 11:00 a.m. Experts
- Dr. Brenda Moore
- Dr. Mary Rowe
- Ms. Susan Barnes

Dr. Brenda Moore

The Task Force heard from three subject matter experts: Dr. Brenda Moore, Dr. Mary Rowe, and Ms. Susan Barnes. Dr. Moore is currently in residence at the Defense Equal Opportunity Management Institute and on sabbatical from the State University of New York in Buffalo. In her briefing, she focused on the percentage of women in the active Armed Forces by race and ethnicity. She expressed her concern that race issues might surface as a significant problem for the Services in the future.

Dr. Mary Rowe

Dr. Rowe serves as a Special Assistant to the President of The Massachusetts Institute of Technology (MIT). She stated that there is no perfect harassment-prevention system; still, to prevent sexual harassment effectively, the Services should adopt a systems approach with back-up mechanisms of checks and balances. Dr. Rowe presented her "Specifications for an Integrated Dispute Resolution System for Dealing with Harassment" to the Task Force. According to Dr. Rowe, effective systems:

- identify explicitly the special expectations of leadership,
- emphasize prevention,
- encourage effective, personal action to stop harassment and to prevent reprisal,
- require prompt complaints and prompt complaint handling,
- offer options for complainants whenever possible,
- protect the rights of all parties,
- treat reprisal as seriously as harassment,
- provide a variety of helpful resources to all parties,
- conduct follow-up monitoring, and
- require meaningful data collection and evaluation of the process.

Ms. Susan Barnes

Ms. Barnes, President and Director of WANDAS Fund,¹ described the work of both WANDAS Fund and WANDAS Watch. She explained that military women

...want a workable complaint system [that] takes gender bias seriously and deals with the effects of bias promptly; they want a responsible gender neutral work ethic and a commitment to a bias-free work space that protects them from the effects of discrimination and enables them to perform their jobs effectively every day of the week. They want respect; they want dignity, and above all they want leadership; they want the total, unqualified support and leadership of their commanders at every level of their chain of command.

¹"WANDAS" is the acronym for "Women Active in our Nation's Defense, Their Advocates and Supporters."

Ms. Barnes concluded by saying that she agreed with the DoD IG's recommendations and by urging the Task Force to undertake significant reform of the Services' discrimination complaints processes.

Week 13	Friday	August 5	2:00 - 3:30 p.m.	Advisory Board on the Investigative Capability of DoD DACOWITS DEOMI
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Advisory Board on the Investigative Capability of DoD

Ms. Paula Boggs, Staff Director of the Advisory Board on the Investigative Capability of the Department of Defense, explained that the Advisory Board is assessing the criminal and administrative investigative capability of the Department of Defense, including the Military Departments. She also discussed recent legislative initiatives which relate to the work of both the Advisory Board and the Task Force. (For legislative outcomes, see comments of HASC staffers below.) Ms. Boggs concluded by stating that she does not support the establishment of a separate body outside the chain of command to investigate complaints of discrimination and sexual harassment.

The National Defense Authorization Act for Fiscal year 1995 requires the Secretary of Defense to direct the Advisory Board on the Investigative Capability of the Department of Defense to include in its final report an assessment of whether the current DoD organizational structure is adequate to oversee all investigative matters related to discrimination and sexual harassment. The Advisory Board is also to ascertain whether additional data collection and reporting procedures are needed to enhance the Department's ability to respond to unlawful discrimination.

DACOWITS

Dr. Paula Shaw, a member of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS), also spoke with the Task Force on August 5. She and other members of the DACOWITS Executive Committee had recently returned from a trip to eleven U.S. military bases in Europe, where they interviewed about 3,000 Service-women. Dr. Shaw reported that, in general, Servicewomen feel sexual harassment is under control; however, they believe the grievance process needs significant improvement. In some commands, sexual harassment is not taken seriously, complaints are often handled improperly, and military women fear reprisal. In conclusion, Dr. Shaw asserted that a loud, clear message that sexual harassment will not be tolerated is essential to the success of any harassment prevention program.

DEOMI

COL Joe returned to brief the Task Force on August 5. At that time, he presented his recommendations for improvements in the overall military Services'

discrimination complaints processing systems. COL Joe and Task Force members also discussed current training standards, DEOMI's capacity, the mix and utilization of EO advisors, and the Navy's Article 138 process.

Week 14 NO MEETING

**Week 15 Thursday August 18 2:00 - 3:30 p.m. MG Arnold, USA
(10 Minutes)**

**Defense Manpower Data
Center (DMDC)**

**HASC Task Force on
Equality of Treatment and
Opportunity in the Armed
Forces**
Charlie Tompkins
Carey Ruppert

**GAO Report -- Review of
Military EO Complaint
Systems**

MG Arnold

MG Wallace Arnold, Acting Deputy Chief of Staff for Personnel, U.S. Army, shared his thoughts on "managing fairness" with the Task Force on August 18. His main point was that, no matter how fair-minded a commander is, fairness will not exist unless he or she takes concrete, positive action to ensure fairness.

Defense Manpower Data Ctr

Dr. Anita Lancaster, Assistant Director of the Defense Manpower Data Center (DMDC), briefed the Task Force on the sexual harassment survey being developed by the DMDC. She returned on August 30 to review the survey in greater detail with Task Force members.

HASC Task Force

Mr. Charlie Tompkins, staff member of the House Armed Services Committee (HASC), briefed the Task Force on the mission and activities of the HASC Task Force on Equality of Treatment and Opportunity in the Armed Forces. He noted there are significant differences in the Services discrimination complaint processes and there is widespread lack of confidence in those processes. He offered the Task Force three recommendations: emphasize the importance of leadership commitment, implement continuing training, and insist on constant monitoring.

Ms. Carey Ruppert and Mr. John Chapla, also HASC staff members, reviewed legislation relating to the work of the Task Force. Ms. Ruppert explained that Armed Services Committees members crafted the Whistleblower provisions to ensure that Service members who report discrimination or harassment are protected. Language in the FY 95 Defense Authorization Act Conference Report extends Whistleblower protection to Service members who report allegations of discrimination or sexual harassment to their chain of command.

Ms. Ruppert also reviewed the section of the Conference Report which covers DoD policies and procedures on discrimination and sexual harassment. The conference report calls for the Secretary of Defense to "develop a comprehensive Department of Defense policy for processing complaints of sexual harassment and discrimination involving members of the Armed Forces" The Secretaries of the military Services are to review and revise their discrimination complaints processes. The Secretary of the Air Force and the Secretary of the Navy are to ensure that those Services' regulations are as specific as the Army's regulations on these matters.

Mr. Chapla also explained sections of the Conference Report which require the Secretary of Defense to submit an annual report on non-deployability, complaints of discrimination and sexual harassment, disciplinary proceedings, retention rates, and enlistment propensity. The Congress identified a need for a coordinated data base on these subjects. In another section, Congress requires the Secretary of Defense to establish victims' advocates programs. Specifically, the Services are to develop victim and witness assistance programs, family advocacy programs, and equal opportunity programs.

GAO

Mr. Al Huntington of the General Accounting Office (GAO) also spoke with the Task Force on August 18. He described how his office is supporting the work of the HASC Task Force. Task Force members noted that it is unfortunate that they will not be able to review the findings of the HASC Task Force and the GAO before submitting their final report to the Deputy Secretary. Task Force members suggested that the Services glean lessons and adopt recommendations from these valuable studies as they work to improve their discrimination complaints processing systems over the next year.

Week 16 NO MEETING

Week 17 Tuesday August 30 10:30 - 12:00 p.m. ROCKS, Inc.

**Special Session
(closed)**

ROCKS, Inc.

MG Frederic Leigh, USA (Ret.) reviewed ROCKS' history and objectives. He stated that there is a declining pool of Black officers because this group has a high attrition rate. He identified four areas critical to career progression: assignments, promotions, evaluations, and professional military education. MG Leigh concluded by making several recommendations to the Task Force. For example, he suggested that the Services eliminate officer evaluation reports for all Second Lieutenants during the first twelve months of active duty, unless there is relief for cause or moral turpitude. Instead, the Services should use mock reports for Second Lieutenants as tools for counseling and professional development.

Week 18 Wednesday September 7 4:00 - 5:30 p.m.

**CAPT Georgia Sadler, USN (Ret)
Director, Women in the
Military Project
Women Research and Education
Institute (WREI)
Association of Naval Services
Officers (ANSO)
DEOC Task Force
Legal Working Group**

CAPT Georgia Sadler, USN (Ret.)

CAPT Georgia Sadler, USN (Ret.), representing the Women's Research and Education Institute (WREI), spoke with the Task Force about sexual discrimination and sexual harassment. She began by saying that reprisal prevention is the most important element of a complaints processing system. In addition, the Services must be able to measure the effectiveness of their systems. CAPT Sadler made five recommendations for effective discrimination prevention programs: lift all combat restrictions, emphasize the key role of leaders, include discrimination prevention in leadership training programs, make occupational standards equitable and sex-neutral, and conduct additional research to clarify sex differences and debunk myths. In conclusion, CAPT Sadler noted that the passage of time is part of the solution to the problems of discrimination and harassment.

Association of Naval Services Officers (ANSO)

Col Cecil Amparan, USMC, representing the Association of Naval Services Officers (ANSO), also spoke with the Task Force. After reviewing ANSO's history and objectives, he identified two key elements of an effective discrimination complaints process: visible command level support and clear understanding of environment in fleet or field (comprehensive databases, for example).

Legal Working Group

Mr. Stephen Preston, Acting General Counsel, Department Defense, briefed the Task Force on the work of the legal policy working group. Working group, co-chaired by Mr. Paul Koffsky, Acting Deputy General Counsel (Personnel and Health Policy), and Ms. Florence Madden, Air Force Deputy General Counsel. The Legal Working Group examined seven issues related to complaints processing: definition of terms, standard of proof for complaint validation, legal sufficiency of investigation, disciplinary actions and sanctions, discrimination and sexual harassment under civilian personnel law, Service reporting requirements, and privacy act considerations.

Mr. Preston offered the Task Force five suggestions. First, the Services need a common definition of "discrimination." Second, the Services need a single definition of "reprisal;" in particular, DoD and Air Force regulations should be revised to protect Service members who make complaints of discrimination to superiors from reprisal. Third, the Task Force should consider recommending that the Navy, Marine Corps, and Air Force adopt regulations similar to the Army regulation which covers legal sufficiency of investigations. Fourth, when developing reporting requirements, the Task Force should focus on the language in the FY 95 Defense Authorization Act Conference Report, as well as the issues raised in the DoD IG report. Fifth, the Task Force should consider drafting a legislative proposal which allows some (Privacy Act) information about the offender's punishment to be revealed to the complainant.²

**Week 22 Tuesday October 4 4:00 - 5:30 p.m. Executive Session III
Discussion of Final Report**

Secretary Widnall opened the meeting by reviewing several of her concerns about the Task Force's final report. General discussion followed concerning revisions to the DoD Directive 1350.2; commander responsibility and performance appraisals; appeals boards for discrimination and sexual harassment complaints; and other miscellaneous issues. The co-chairs asked the principals to submit written comments to the Task Force support staff by October 7, 1994.

**Week 35 Friday January 6 9:00 - 10:30 a.m. Executive Session IV
Discussion of Final Report**

The co-chairs opened the meeting by asking for comments on the draft report. Have we responded appropriately to the Deputy Secretary's request? In general, the principals agreed, the draft final is satisfactory. However, the principals did raise some concerns including factual correctness, the appeals procedures, performance reports, standards, and changes to DoD Directive 1350.2. Task Force principals agreed that Service-specific language should be replaced with equivalent, non-Service-specific wording. While the principals agreed that clear appeal procedures are necessary, they do not want to add bureaucratic layers. The legal sub-group will revise the wording of the recommendation concerning performance reports and

² Section 532 of the FY 95 Defense Authorization Act Conference Report calls for the Secretary of Defense to submit to Congress, not later than March 31, 1995, a proposal for any legislation necessary to enhance the Department's capability to address discrimination and harassment. The Secretary should propose legislative relief from the Privacy Act for the purpose of offering meaningful feedback to complainants.

support of equal opportunity. Most principals agreed that standardization in the areas of training and investigations would be productive. Several Task Force principals suggested that the ODASD(EO) begin revising DoD Directive 1350.2. Group discussion of each recommendation in the draft report followed.

**Week 36 Friday January 13 9:30 - 11:00 a.m. Executive Session V
Discussion of Final Report**

Secretary Widnall opened the meeting by continuing the group discussion of the report's recommendations. The principals raised concerns about procedures for revising DoD Directive 1350.2; standards; DEOMI training; confidentiality of advice lines; and reprisals. The DASD(EO) will draft the directive and the Services as well as the Defense Agencies will coordinate on the contents. The standards that are implied in recommendation 7 need to be listed in the text of the report. The principals concurred that DEOMI's review and comment on Service EO training materials should remain in the report. All agreed that the advice or helpline must remain an advice line only with no records or action taken. The principals concluded that the definition of reprisal in Directive 1350.2 must be expanded to include "peer condoned" reprisal. In conclusion, Secretary Widnall explained that a paragraph would be added to the Executive Summary to discuss the progress each Service has made in the handling of EO complaints since the Task Force began.

**Week 38 Tuesday January 24 10:00 - 11:30 a.m. Executive Session VI
Discussion of Final Report**

Under Secretary Dorn opened the meeting by suggesting that the group continue to discuss the report's recommendations. Discussions concerning legal sufficiency, feedback/follow-up, and guidelines for sanctions followed. Under Secretary Dorn suggested a revision to the text and the recommendations contained in the joint organizations and Defense Agencies section of the report. He asked the Task Force support staff to develop a list of unresolved issues and revise the draft as soon as possible. In conclusion, Secretary Widnall asked that the Task Force break for several weeks while the support staff incorporated the previously discussed changes.

**Week 51 Friday April 28 8:00 - 9:00 a.m. Executive Session VI
Approval of Final Report**

Secretary Widnall opened the meeting by calling for final approval of the report. Each member spoke and approved the final draft of the report. Admiral Bowman and Ms. Heath expressed concerns that were discussed by the members. Mr. Vander Schaaf chimed in and asked for the status of the directive. Mr. Love then began a brief update and said that ODASD (EO) hopes to release the directive in early May.

The meeting concluded with Secretary Widnall expressing that she was pleased with the report. Mr. Dorn closed by saying that the next step would be to send the report for copy edits.

**Chronology of Discrimination and Sexual Harassment
Policy within the Federal Government and the
Department of Defense**

CHRONOLOGY OF DISCRIMINATION AND SEXUAL HARASSMENT POLICY WITHIN THE FEDERAL GOVERNMENT AND THE DEPARTMENT OF DEFENSE

25 Jun 41 President Roosevelt issues Executive Order 8802 which prohibits discrimination based on race, creed, color, or national origin in both defense industries "or government." A Committee on Fair Employment Practice is established within the Office of Production Management to receive and investigate complaints and to "recommend" measures necessary to implement the order.

27 May 43 President Roosevelt establishes an independent Fair Employment Practice Committee. The Committee is authorized to formulate policies and promulgate regulations, but it can still only make recommendations to the agencies. In addition to receiving and investigating complaints, however, the Committee is authorized to conduct hearings, make findings of fact, and take "appropriate" steps to eliminate discrimination.

1947 A. Philip Randolph, President of the Brotherhood of Sleeping Car Porters, and Grant Reynolds, a New York clergyman and politician, form a Committee Against Jim Crow in Military Service and Training. The group's principal goal is to promote integration within the military and to eliminate quotas.

26 Jul 48 President Truman issues Executive Order 9980 which prohibits discrimination because of race, color, religion, or national origin within the Federal establishment. Heads of each Department are responsible for implementing the policy and are required to appoint a Fair Employment Officer within their organization. A Fair Employment Board within the Civil Service Commission is also created to review agency head decisions. If recommendations made to the agencies are not complied with, the Board is to report to the President and make recommendations.

26 Jul 48 President Truman issues Executive Order 9981 which declares as policy of the President that there shall be equality of treatment and opportunity for all persons in the armed forces without regard to race, color, religion, or national origin. A President's Committee on Equality and Treatment and Opportunity in the Armed Forces (Fahy Committee) is established to examine the rules, procedures, and practices of the armed forces to

determine which should be altered or improved in order to carry out the President's order.

1948 The Committee Against Jim Crow in Military Service and Training shifts its focus to monitor the implementation of Executive Order 9981 in the Services and the activities of the Fahy Committee. It holds regional hearings which reveal the impact of discrimination and segregation on the psyche of black soldiers.

22 May 50 President's Committee on Equality of Treatment and Opportunity in the Armed Forces (Fahy Committee) submits its final report to the President. It concludes, among other things, that desegregation of the Armed Forces had been accomplished, but not integration.

12 Jan 54 Secretary of Defense Charles Wilson issues a memorandum, "Schools on Military Installations for Dependents of Military and Civilian Personnel." The memo orders the integration of all schools on military installations.

18 Jan 55 President Eisenhower issues Executive Order 10590 prohibiting discrimination in Federal employment based on race, color, religion, or national origin. An independent President's Committee on Government Employment Policy is established but empowered only to make recommendations to the President. Agencies are left in charge of their own programs, but must appoint an Employment Policy Officer and issue implementing regulations.

6 Mar 61 President Kennedy issues Executive Order 10925. A President's Committee on Equal Employment Opportunity is established and made responsible for enforcing "positive measures" to ensure EEO in both Federal employment and by government contractors and subcontractors. Federal agencies are required to conduct studies of their current employment practices and to recommend positive measures to eliminate discrimination. Beyond that, however, despite name changes, the system established by President Eisenhower is retained.

24 Mar 61 Secretary of Defense Robert McNamara issues a memorandum, "Non-Discrimination in Employment." The memo is intended to implement E.O. 10925 within the Department of Defense.

28 Apr 61 Secretary of Defense Robert McNamara issues a memorandum, "Military and Civilian Employee Recreational Organizations." The memo prohibits the use DoD facilities or the sponsorship by DoD of any organization which discriminates based on race, creed, color, or national origin.

1961 President Kennedy establishes a Committee on the Status of Women, chaired by Eleanor Roosevelt, to look into problems encountered by women employed within the Federal government.

May 61 The American Veterans Committee releases a report, "Civil Rights Audit of the National Guard." The report summarizes the findings of a recent investigation of racial practices in the National Guard. The report argues that discrimination and segregation is widespread in the National Guard and that the President has the authority to halt such practices.

19 Jun 61 Deputy Secretary of Defense Roswell Gilpatric issues a memorandum, "Availability of Facilities to Military Personnel." The memo announces a policy to provide "to the extent possible" integrated facilities on military installations to military personnel when such facilities are not available in adjacent or surrounding communities.

2 Jan 62 DoD Directive 1125.4, "Equal Employment Opportunity," issued.

1962 The President's Commission on the Status of Women issues regulations requiring all appointments in the Federal government to be made without regard to sex, except certain positions involving custodial and institutional work and law enforcement jobs requiring the bearing of firearms.

3 Apr 62 Deputy Secretary of Defense Roswell Gilpatric issues a memorandum, "Compliance with E.O. 9981 in the Army, Navy, Air Force and Marine Corps Reserves." The memo directs that "all-Negro and all-White" reserve units be identified and integrated and that a review of the assignment of Negroes to reserve units be conducted to determine if a disproportionate number are assigned to pools.

22 Jun 62 President's Committee on Equal Opportunity in the Armed Forces (Gesell Committee) is created in response to allegations of continuing unfairness and discrimination against blacks in the Armed Forces. The group is tasked to identify measures which should be taken to improve the effectiveness of existing equal opportunity policies and to provide equality of opportunity for members of the Armed Forces and their dependents in the civilian community.

1963 U.S. Commission on Civil Rights issues a report, "The Negro in the Armed Forces." The report examines participation in the Armed Forces, occupational assignments, recruitment and promotion procedures, discrimination on base, community relations, housing discrimination, discrimination in education, and problems in public accommodations. The report then makes six recommendations.

8 Mar 63 The Secretary of Defense sends a memorandum on "Nondiscrimination in Family Housing" to all Military Departments. The memorandum directs that there be no discrimination in leased family housing or in listing, under Service auspices, private housing where there are limitations of access or use based upon race.

16 Jun 63 The President's Committee on Equal Opportunity in the Armed Forces (Gesell Committee) issues its initial report. The report emphasizes the impact of segregation and discrimination in communities near military bases on Negro (sic) personnel. Practices which segregate or discriminate are declared to be morally wrong.

15 Jul 63 Assistant Secretary of Defense (Manpower) Norman Paul issues memorandum, "Dependent Schooling in Closed School Districts." The memo directs commanders in areas where public education is segregated to counsel military parents on procedures available for the transfer of their children to integrated schools and on legal action as an alternative to accepting local school board decisions to bar their children.

21 Jun 63 President Kennedy sends the Gesell Committee report to Secretary of Defense McNamara and asks for his review and report on the recommendations within 30 days.

15 Jul 63 Assistant Secretary of Defense (Manpower) Norman Paul issues a memorandum, "Assignment of Dependents of Military Personnel to Public Schools," to the Military Departments. The memo establishes DoD policy to secure non-racial school placement for all children of military personnel.

16 Jul 63 Secretary of Defense Robert McNamara issues a memorandum to the Military Departments on the participation of military personnel in civil rights demonstrations. The memo states that it is "highly inappropriate and unnecessary" for military personnel to participate in such demonstrations. Five specific criteria are then set out when military personnel "may not under any circumstances" participate in such demonstrations.

24 Jul 63 Secretary of Defense Robert McNamara responds to President Kennedy regarding the Gesell Committee report and indicates which recommendations are being implemented, those which will require more study, and those about which the Department has concerns. The Secretary states that military effectiveness is "unquestionably reduced" by racial discrimination. The Secretary's letter focuses on discrimination in off-base housing and indicates a willingness to use the "off limits" sanction,

but only if approved by the Secretary of the Military Department in question.

26 Jul 63 Secretary of Defense Robert McNamara issues DoD Directive 5120.36, "Equal Opportunity in the Armed Forces." The Directive establishes DoD policy to conduct all activities free from racial discrimination and to provide equal opportunity for all uniformed members and civilian employees. The Directive authorizes the establishment of a Deputy Assistant Secretary of Defense for Civil Rights. The Directive is generally viewed as a response to the initial report of the Gesell Committee and represents the Department's first equal opportunity policy.

3 Mar 64 Deputy Assistant Secretary of Defense (Civil Rights) issues a memorandum, "Elimination of Racial Designators on DD Forms." The memo orders the removal of racial designators from 16 of 25 forms used in common by the Services and the Office of the Secretary of Defense. The memo does not address racial designators on Service-specific forms.

25 Mar 64 Assistant Secretary of Defense (Manpower) Norman Paul issues a memorandum, "Non-Discrimination in Civil Schooling of Military Personnel." The memo declares that no Department of Defense funds may be spent to pay tuition at segregated educational institutions.

17 Apr 64 Deputy Assistant Secretary of Defense (Civil Rights) Alfred Fitt issues a memorandum, "Segregated Schools and Military Departments." The memo reminded the Services that it was Department of Defense policy to require the placement of military dependents in integrated schools and that commanders were expected to take "appropriate efforts" on behalf of children to eliminate deviation from that policy.

2 Jul 64 The Civil Rights Act of 1964 is passed. Title VII prohibits discrimination based upon race, color, religion, sex, or national origin in employment. The Federal government is exempted from coverage.

7 Jul 64 Deputy Secretary of Defense Cyrus Vance issues a memorandum, "Federal Participation at Segregated Meetings." The memo prohibited the participation of DoD personnel in such matters and made base commanders responsible for enforcing the ban.

24 Jul 64 The Assistant Secretary of Defense (Manpower) issues DoD Instruction 5525.2, "Processing of Requests by Military Personnel for Action by the Attorney General under the Civil Rights Act of 1964." The Instruction prescribes policies and procedures for processing the requests of enlisted personnel for legal action under Title II (Public Accommodations), Title III (Public Facilities), and Title IV (Public Education) of the Act. The

Instruction also encourages, but does not compel, the use of command assistance by Servicemen who wish to request suit by the Attorney General.

20 Nov 64

Gesell Committee submits its final report to the Secretary of Defense. The report focuses on the status of black service members overseas, particularly in off base housing, and in the National Guard. The Committee wanted its recommendations on off base housing in its interim report applied overseas, including use of off-limits sanctions when necessary. The Committee also called the National Guard the only branch of the armed forces which had not been integrated. It called for a wide range of reforms and recommended that sanctions available under Title VI of the Civil Rights Act of 1964 be used to enforce the recommended reforms.

28 Dec 64

Secretary of Defense Robert McNamara issues DoD Directive 5500.11, "Nondiscrimination in Federally Assisted Programs." The Directive implements Title VI of the Civil Rights Act of 1964, which prohibits discrimination in grants; loans of federal funds; transfer, sale, or lease of federal property; or in any other form of federal financial assistance. The Directive established a procedure whereby federal funding could be terminated if discrimination was found. The largest of the DoD programs subject to these provisions is the National Guard.

15 Feb 65

Deputy Secretary of Defense Cyrus Vance sends a memorandum, "Equal Opportunity in the National Guard," to the Secretaries of the Army and Air Force. In the memo, he orders them to amend National Guard regulations in such a manner as to eliminate any trace of racial discrimination and to ensure that the polity of equal opportunity and treatment is clearly stated. This becomes the impetus for the first significant changes on racial policies within many of the States.

24 Sep 65

President Johnson issues Executive Order 11246. The order prohibits discrimination based on race, creed, color, or national origin in government employment and in employment by government contractors and subcontractors. Sex discrimination is not prohibited. The heads of government departments and agencies are responsible for implementing "positive programs" of employment under the supervision of the Civil Service Commission.

11 Jan 66

The Assistant Secretary of Defense (Manpower) issues DoD Instruction 7720.17, "Off-Base Equal Opportunity Status Report." The Instruction requires the Military Departments to submit an annual report on: (1) off-base equal opportunity conditions and (2) Efforts taken by installation commanders to oppose off-base discriminatory practices.

11 Apr 67 Secretary of Defense Cyrus Vance issues a memorandum, "Equal Opportunity for Military Personnel in Rental of Off-Base Housing." The memorandum requires the Military Departments to undertake a nationwide census of equal opportunity in the rental of off-base housing. After the results of the census are established, each base commander is required to mobilize local community support for opening up all housing in the vicinity of bases to all military personnel.

30 Jun 67 Secretary of Defense memorandum to the Military Departments on "Unsatisfactory Housing for Negro Military Families Living Off-Post in the Fort George G. Meade Area." The memorandum acknowledges that less than 10% of Negro personnel assigned to Ft. Meade could find suitable housing. The memorandum then establishes a seven mile radius circle around Ft. Meade and requires that all rental housing units within that circle be rented on a nondiscriminatory basis or that no military personnel will be permitted to rent units within that area.

7 Jul 67 The Secretary of Defense issues a memorandum on "Off-Base Housing Referral Services." The memorandum requires each Military Department to establish a housing referral office at each base. Such offices are to clear off-base housing units which seek to rent to military personnel and to refer all personnel seeking off-base housing only to those units which do not discriminate.

25 Jul 67 The Assistant Secretary of Defense (Manpower) issues a memorandum on "Housing Referral Offices Interim Operating Procedures." The memorandum establishes criteria to be used by base housing offices in accepting and filling listings of off-base rental or lease housing units.

10 Aug 67 The National Advisory Commission on Civil Disorders (Kerner Commission) writes to President Johnson and recommends a substantial increase in the recruitment of Negroes for the Army and Air National Guard as well as an improvement and expansion of riot control training for Guard members.

13 Oct 67 President Johnson issues Executive Order 11375. The order adds "sex" as a prohibited form of discrimination in Federal employment as well as in employment by government contractors and subcontractors. "Creed" is changed to "religion" in the prohibited bases of discrimination.

25 Jan 68 The Civil Service Commission creates the Federal Women's Program (FWP) by issuing Federal Personnel Manual (FPM) Letter 713-8. The FWP is to be incorporated into each Agency's regular EEO program and written Plans of Action. FWP coordinators are to be designated. A wide

variety of personnel actions are discussed as well as barriers to the employment of women. Sexual harassment is not mentioned.

report found that race problems in the military were a reflection of racial problems in the larger society; that there had been poor communication at the junior levels of command; and that there had been a deterioration of discipline at the Camp. The report then concluded that the incidence of violence did not result from a specific provocation, but had been generated "by a few militant blacks who fanned the flames of racism..."

Feb 70	House Armed Services Committee issues report on the 1969 incidences of racial violence at the Camp Pendleton brig.
Mar 70	Members of the Congressional Black Caucus and other members of Congress meet with the President regarding reports of minority group member's problems with the military justice system.
Apr 70	The Assistant Secretary of Defense (Manpower & Reserve Affairs) releases a report, "Racial Discrimination: An Analysis of Serviceman Opinions." There are six major topics covered in the report. Among the findings of the report was that blacks were twice as likely as whites to have had an Article 15 (nonjudicial) punishment or a courts martial (judicial) punishment. This lead to the perception by blacks that they were being discriminated against in promotions.
31 Jul 70	Report of the Inter-Service Task Force on Education in Race Relations (Theus Report) is issued. The Task Force had been established by the Secretary of Defense to develop an education program in race relations to be used throughout the Armed Forces. The Task Force recommends: (1) Immediately implement a mandatory race relations education program for all active duty personnel at all military schools; (2) Establish a DoD Race Relations Education Institute to train instructors and disseminate material on race relations; (3) Establish a DoD Race Relations Education Board to manage, supervise, and monitor the program; (4) Establish ad hoc panels of military and civilian experts to assist the program; (5) Develop correspondence courses in race relations; (6) Establish DoD and Service level information offices to develop and disseminate race relations education material; (7) Ensure that support is given at all levels of command; and (8) Require the Services to demonstrate and publicize equal opportunity in all areas.
14 Dec 70	Secretary of Defense Melvin Laird issues DoD Directive 1100.15, "Equal Opportunity Within the Department of Defense." This Directive cancels DoD directive 5120.36, which was issued in 1963, and adds religion, sex, and national origin to the list of prohibited discriminations. DoD Components are required to develop affirmative action programs, but no criteria for such programs are established.

Jan 71 In response to requests received from black military personnel, as well as news accounts of increased racial tensions, the National Association for the Advancement of Colored People (NAACP) sends a three man team to West Germany to evaluate the situation. The team stays three weeks and interviews personnel at fifteen installations.

22 Apr 71 Mr. Roy Wilkins, Executive Director of the NAACP, sends a report, "The Search for Military Justice: Report of an Inquiry into the Problems of the Negro Serviceman in West Germany," to Secretary of Defense Melvin Laird. The report contains 36 specific recommendations in six general areas: promotion discrimination, administration of justice, provision of legal advice or counsel, housing discrimination, and discrimination in recreational facilities.

22-25 May 71 Racial disturbances at Travis Air Force Base, California. One of the cited causes is the perception among Blacks that nonjudicial punishments (Article 15s) are imposed upon Blacks more frequently and more harshly than upon Whites for comparable offenses.

24 Jun 71 Deputy Secretary of Defense David Packard issues DoD Directive 1322.11, "Department of Defense Education in Race Relations for Armed Forces Personnel." The Directive establishes the basic policy of preventing and eliminating racial tensions, unrest, and violence. To that end, a Defense Race Relations Education Board is established to advise the Secretary of Defense and to develop overall policy guidance for the DoD program of education in race relations for Armed Forces personnel on active duty. A Defense Race Relations Institute (DRRI) is also established to train race relations instructors for the Services, develop curricula for race relations education programs, conduct research, disseminate educational guidelines and materials for use in the Services, and perform evaluations of program effectiveness.

15 Oct 71 The Assistant Secretary of Defense (Manpower & Reserve Affairs) submits a report to the Chairman of the House Armed Services Committee. The report, "Lejeune, Travis and Beyond: A Survey of Progress in Equal Opportunity in the Armed Forces, July 1969 to Present," covers race relations education, poor communications between the races and between officers and enlisted personnel, military justice, promotions and job assignments, minority officer recruitment and retention, housing and public accommodations, law enforcement, and military involvement in local communities.

Nov 71 Thirteen members of the Congressional Black Caucus visit ten U.S. military installations to talk with military members about racism in the military.

16-18 Nov 71 The Military Affairs Committee of the Congressional Black Caucus holds hearings on racism in the military. Topics of interest include military justice, housing and medical problems, and member observations from their base visits earlier in the month.

21 Jan 72 Secretary of Defense Melvin Laird establishes the Task Force on the Administration of Military Justice in the Armed Forces. The Task Force has 14 members and is co-chaired by LTG C. E. Hutchin, Jr., USA and Mr. Nathaniel Jones, General Counsel of the NAACP. The group is asked to: (1) Determine the nature and extent of racial discrimination in the administration of military justice; (2) Assess the impact of factors contributing to disparate punishment; (3) Judge the impact of racially related practices on the administration of military justice and respect for law; and (4) Recommend ways to strengthen the military justice system and enhance the opportunity for equal justice for every American serviceman and woman.

24 Mar 72 The Equal Employment Opportunity Act of 1972 is signed. It brings the Federal government under coverage of Title VII of the Civil Rights Act of 1964, but leaves enforcement up to the Civil Service Commission rather than the EEOC.

15 May 72 The Congressional Black Caucus releases a report, "Racism in the Military: A New System for Rewards and Punishment." The report contains seventeen recommendations covering the following topics: military job assignments, promotions, command problems, equal opportunity offices, housing and medical problems and military justice (Article 15, pre-trial confinement, court martial, and discharge).

12-13 Oct 72 Incidents of racial violence aboard the carrier *U.S.S. Kitty Hawk*. Allegations of racial harassment by a ship's investigator were followed by armed confrontation between Marines and black sailors. Ship's officers intervened and eventually abated the conflict. Forty-seven sailors had been injured and twenty-six were charged with violations of the UCMJ. After the incidents, the ship completed a 177 day tour off the coast of Vietnam in support of U.S. military operations.

1-4 Nov 72 Incidents of racial violence aboard the carrier *U.S.S. Constellation*. After small group meetings, groups of black sailors presented grievances to ship's officers. False rumors were circulated alleging mass discharges of black sailors. A "sit in" resulted. Grievances were discussed. A "beach detachment" was put ashore. Discussion of grievances continued for several days. At the conclusion of discussions, the men refused to reboard

the ship and were charged with unauthorized absence. one hundred twenty-two men were involved.

30 Nov 72 The DoD Task Force on the Administration of Military Justice in the Armed Forces issues a four volume report with seventy-two recommendations.

2 Jan 73 The House Armed Services Committee issues a report by its Special Subcommittee on Disciplinary Problems in the U.S. Navy. The report focuses on racial incidents aboard the aircraft carriers *U.S.S Kitty Hawk* and *U.S.S. Constellation*. The subcommittee found there was an atmosphere of indiscipline and permissiveness in the Navy; that there were problems in communication between white supervisors and black sailors; and that there was a perception among blacks of discrimination. The subcommittee found the violence aboard the "Kitty Hawk" to have been spontaneous, while the violence aboard the "Constellation" to have been deliberately planned by a small group of black sailors.

11 Jan 73 Secretary of Defense Melvin Laird issues a memorandum, "Report of the Task Force on the Administration of Military Justice in the Armed Forces," to the Secretaries of the Military Departments. In that memorandum, the Secretary approves the Army's plan to provide formal recognition of 2,012 equal opportunity spaces. The Secretary also Directs that Judge Advocate organizations are to be revised to place defense counsels under the authority of the Judge Advocate General; that nonjudicial punishment (Article 15) procedures be revised; and that procedures for discharging personnel under other than honorable conditions be revised to allow prospective discharges to consult with a judge advocate at the outset of said procedure.

15 May 73 The DoD Task Force on the Administration of Military Justice in the Armed Forces issues a volume with twelve follow-on studies to its 30 Nov 72 report.

6 Aug 73 Deputy Secretary of Defense William Clement revises and reissues DoD Directive 1322.11, "Department of Defense Education in Race Relations for Armed Forces Personnel." The Directive requires race relations education and training for National Guard and Reserve personnel as well as those on active duty, amends the mission of the Defense Race Relations Board to include the Guard and the Reserves, and deletes the requirement to have Guard or Reserve personnel on the faculty of the Defense Race Relations Institute.

1975 Working Women United, an activist group, conducts one of the first surveys on sexual harassment in employment. Seventy percent of those

responding indicate that they had experienced sexual harassment at least once in their career.

Jan 76 *Redbook* magazine places a survey on sexual harassment in its January issue for readers to complete and return.

3 Jun 76 Secretary of Defense Donald Rumsfeld revises and reissues DoD Directive 1100.15, "The Department of Defense Equal Opportunity Program." For the first time it defines terms such as "equal opportunity," "military equal opportunity program," and "affirmative action plan." It prohibits age discrimination for the first time. It requires military affirmative action plans to have goals and timetables and requires that such plans be submitted to and approved by the Assistant Secretary of Defense (Manpower and Reserve Affairs) [ASD (M&RA)]. It also includes language for the first time which can be construed to require the Components to have a military discrimination complaint processing system. Finally, it required for the first time annual reports to the ASD (M&RA) on progress being made to achieve affirmative action plan goals.

17 Sep 76 DoD Directive 1100.15 is revised to permit Service regulations to require differential treatment of personnel based on sex or age if required by statute.

Nov 76 *Redbook* magazine publishes the results of its January survey of readers. Over 9,000 persons had respond. This survey is often credited with bringing the issue of sexual harassment to widespread public attention.

1977 First Federal District Court decision dealing with sexual harassment in the Federal government.

23 Feb 78 President Carter issues Reorganization Plan No. 1. Those portions of the plan dealing with employment functions are to become effective on 1 Jan 79. Civil Service Commission responsibilities under Title VII and for discrimination complaints are transferred to the EEOC.

12 Sep 78 Deputy Secretary of Defense Charles Duncan revises and reissues DoD Directive 1322.11, "Education and Training in Human/Race Relations for Military Personnel." The scope of the Directive is enlarged to cover human relations and equal opportunity education as well as race relations. The Defense Race Relations Institute mission is redefined to fit the new scope, an annual curriculum review requirement is established, and procedures for nominating and approving faculty and staff are revised.

6 Nov 78 The Civil Service Reform Act of 1978 is signed to become effective on 1 Oct 79. Title III abolishes the Civil Service Commission and creates the

Office of Personnel Management (OPM) and the Merit System Protection Board (MSPB). The OPM is assigned responsibility for the FWP, Hispanic Employment Program (HEP), and the Federal Equal Opportunity Recruitment Program (FEORP). FEORP authority, however, is to be in coordination with the EEOC, as FEORPs are to be an integral part of Agency written Affirmative Employment Programs (AEPs). The MSPB is authorized to receive and process "mixed" case discrimination complaints in lieu of the EEOC if the complainant so chooses. Title VII rights must be given up to do so, however.

1979 Catherine MacKinnon publishes her landmark book, Sexual Harassment of Working Women: A Case of Sexual Discrimination. It becomes the most influential book to date on the legal and policy debate on sexual harassment. She defines sexual harassment as "unwanted imposition of sexual requirements in the context of unequal power."

Jun 79 The National Commission on Unemployment Compensation holds hearings. It takes testimony on problems faced by working women, including sexual harassment, and hears the results of a survey by the Michigan Employment Security Commission which included items on sexual harassment.

27 Jul 79 The Subcommittee on Investigations, Committee on Post Office and Civil Service, U.S. House of Representatives begins an investigation into sexual harassment in the Federal government. The investigation is initiated because of the results of an unofficial survey conducted at the Department of Housing and Urban Development which revealed that 166 women responded that they had been sexually harassed on the job.

2 Aug 79 The name of the Defense Race Relations Institute is changed to the Defense Equal Opportunity Management Institute.

23 Oct 79
1 Nov 79
13 Nov 79 The Subcommittee on Investigations holds hearings on sexual harassment in the Federal government. The hearings focus on sexual intimidation by a male supervisor of a subordinate female employee and on the length of time it takes to process a discrimination complaint within the Federal system. A representative from the Women's Legal Defense Fund testified that at least 70% of working women had experienced sexual discrimination. After the hearings were over, the Subcommittee Chairman, who was also the Chairman of the full Post Office and Civil Service Committee, wrote to the OPM and asked them to issue a directive clearly defining sexual harassment and declaring it a prohibited personnel practice. The Chairman also asked the MSPB to initiate a survey of the extent of sexual harassment in the Federal workplace.

report that they had personally experienced sexual harassment during the previous 24 months.

5 Aug 80 Chairman Hanley writes to the Federal Agencies. He asks them to respond to nine questions on how they are implementing the OPM directive of Dec 79 on sexual harassment and the EEOC interim guidelines of Apr 80.

23 Sep 80 The EEOC issues Management Directive 704 (EEO-MD-704) which contains instructions to Federal agencies on how to prevent sexual harassment in the workplace. Agencies are also required to develop written sexual harassment supplements to be inserted into their FY 80 transition Affirmative Action Plans.

25 Sep 80 The House Subcommittee on Investigations holds more hearings on sexual harassment in the Federal government. The hearings focus on the preliminary report of the MSPB and on Federal agency responses to the Chairman's letter of 5 Aug.

10 Nov 80 The EEOC publishes its final guidelines on sexual harassment in the *Federal Register*. They are essentially the same as what was published earlier in April. These guidelines are still in effect and are unchanged since originally issued.

17 Dec 80 A private sector consultant issues a draft report, "Sexual Harassment: Civilian and Military Perspectives," to the DASD(EO). The draft report discusses sexual harassment as a sociological phenomenon, summarizes current efforts to solve the problem, reviews Military Department actions to prevent sexual harassment, and offers recommendations for further action by the DoD.

Mar 81 The MSPB publicly releases its final report, "Sexual Harassment in the Federal Workplace -- Is It A Problem?" The report indicates that 42% of all women and 15% of all men employed by the Federal government had experienced sexual harassment on the job sometime within the previous 24 months. It concludes that sexual harassment is a legitimate problem and that agency managers had not done enough to resolve the problem. The report contains eight recommendations for additional action.

Mar 81 The private consultant submits her final report, "Countering Sexual Harassment: Theory and Applications for the Department of Defense" to the DASD(EO). The report is essentially the same as the draft issued in December 1980. It recommends that sexual harassment be defined as: "The manifestation of sexual discrimination which results in unwanted, unsolicited, inappropriate, coercive, or illegal verbal or physical

communications or behaviors which demean the dignity and status of military personnel and/or undermine the integrity and accomplishment of the defense mission."

17 Jul 81 Secretary of Defense Caspar Weinberger issues a memorandum, "Department of Defense Policy on Sexual Harassment." Though not actually defining sexual harassment, the memorandum encourages compliance with the OPM and EEOC guidance previously issued.

6 Aug 81 The ASD(MRA&L) issues a memorandum supplementing the Secretary's 17 Jul issuance and establishing a definition of sexual harassment based upon that in the EEOC guidelines, but omitting the word "unwelcome."

28 May 85 Secretary of Defense memorandum reiterating the 1981 policy issuance.

1986 The MSPB decides to update its 1980 survey and 1981 report on sexual harassment in the Federal government

19 Jun 86 The U.S. Supreme Court issues its decision in *Meritor Savings Bank, FSB v. Vinson, et al.* This is the first Supreme Court decision to rule that sexual harassment is a violation of Title VII. The Court adopts the EEOC's 1980 guidelines as definitive and recognizes two categories of harassment: (1) harassment that involves the conditioning of employment benefits on sexual favors [e.g., quid pro quo] and (2) harassment that, while not affecting economic benefits, creates a hostile or offensive working environment. The majority decision recognizes that the most important element of any sexual harassment claim is that the sexual advances were "unwelcome."

24 Dec 86 Secretary Weinberger signs a memorandum, "Sexual Harassment and Discrimination." The memo acknowledges that sexual harassment problems continue and that there is a need to raise the awareness of commanders. It also acknowledges that the chain of command has not adequately addressed the issues or responded appropriately to complaints. Everyone is encouraged to do more to eliminate sexual harassment.

29 Apr 87 Deputy Secretary of defense William Taft issues DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program." This Directive is the first to be devoted solely to military equal opportunity programs instead of lumping them in with civilian and government contractor programs. The Directive establishes a Defense Equal Opportunity Council (DEOC) to coordinate and review military and civilian EO programs, monitor progress in achieving program elements, assist in developing policy guidance for equal opportunity and human relations training, and to advise the Assistant Secretary of Defense (Force

Management and Personnel) [ASD (FM&P)] on equal opportunity matters. The Directive also establishes a DEOMI Board of Visitors to serve as an external source of expertise to the Institute and to ensure an external review of the Institute's objectives, policies, and operations. Additional terms are defined for the first time and ten specific categories are established for the Component annual affirmative action plan reports submitted to the ASD (FM&P).

Jan 88	A report released by the Task Force on Women in the Military recommends that the DoD conduct a survey on sexual harassment.
Feb 88	Secretary of Defense Frank Carlucci authorizes a DoD-wide survey on sexual harassment in the active duty military.
29 Feb 88	The ASD (FM&P) issues DoD Instruction 1350.3, "Affirmative Action Planning and Assessment Process." This Instruction elaborates upon the annual reporting requirement established in DoD Directive 1350.2 of April 29, 1987. For each of the ten required reporting categories and subjects in the annual military equal opportunity assessment, the Instruction establishes a data format and requirements for a narrative assessment.
Jun 88	The MSPB releases a follow-up report, "Sexual Harassment in the Federal Government: An Update." The report concludes that while more people are aware of what constitutes sexual harassment, the numbers of those who have experienced harassment had not changed appreciably from 1981. Coworkers are still identified as the most frequent source of harassment and unwanted sexual teasing, jokes, remarks, or questions is still identified as the most common type of harassment. Although most agencies have issued sexual harassment prevention policies and conducted training, little effect is noted. Sexual harassment is estimated to cost the government \$133.5 million per year in replacing harassed employees, paying sick leave to employees experiencing harassment, and reduced productivity.
20 Jul 88	Secretary of Defense Frank Carlucci issues a policy memorandum, "DoD Definition of Sexual Harassment." The definition closely adheres to the EEOC guidelines issued in 1980 and incorporates the word "unwelcome" for the first time.
2 Sep 88	Secretary of Defense Frank Carlucci issues a policy memorandum, "Responsibility for Maintaining a Work Force Free of Sexual Harassment." The memo acknowledges the recent MSPB report and attempts to provide some of the additional guidance and emphasis recommended in the report.

25 Oct 88 The EEOC issues a Notice to staff, "Policy Guidance on Current Issues of Sexual Harassment." The document summarizes the development of sexual harassment theory through EEOC decisions and Court cases.

Nov 88 - Jun 89 DoD conducts a survey of sex roles in the active duty military. Items concerning sexual harassment are included.

23 Dec 88 Deputy Secretary of Defense William Taft revises and reissues DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program." The revised Directive expands the responsibilities of the ASD (FM&P), adds a requirement that Component equal opportunity programs include an EO awards program for individuals and units, elaborates upon the definition of "ethnic group," and expands the definition of "sexual harassment."

19 Mar 90 The EEOC issues a new Notice to staff, "Policy Guidance on Current Issues of Sexual Harassment," which updates and supersedes the Oct 88 issuance.

11 Sep 90 The Defense Manpower Data Center (DMDC) releases the report, "Sexual Harassment in the Military: 1988." Sixty-four percent of female respondents and 17% of males experienced some form of sexual harassment in the previous year. The female rate was higher than the 42% reported by their civilian counterparts in 1988, although the male rate was basically the same. Verbal harassment was the most common form experienced, but 15% of the military women experienced pressure for sexual favors or actual sexual assault. Only 11% of civilian women reported pressure for sexual favors or experienced assault.

12 Jul 91 Secretary of Defense Dick Cheney issues a policy memorandum, "Department of Defense Strategies to Eradicate Sexual Harassment in the Military and Civilian Environment." This memo retains the 1988 definition of sexual harassment, but it also outlines an eight point program intended to eliminate sexual harassment within DoD.

5-7 Sep 91 The Tailhook Association holds its 35th annual symposium in Las Vegas, Nevada.

8 Sep 91 LT Paula Coughlin verbally complains to her boss that she was sexually assaulted during the Tailhook symposium.

11 Oct 91 The Vice Chief of Naval Operations directs the Naval Investigative Service (NIS) to conduct a criminal investigation of the Tailhook convention.

29 Oct 91 The Secretary of the Navy directs that the Naval Inspector General conduct an inquiry into any noncriminal abuses or violations of law or regulation associated with the Tailhook convention.

Mar 92 The Navy Personnel Research and Development Center releases a report, "Assessment of Sexual Harassment in the Navy: Results of the 1989 Navy-wide Survey." The survey found that 42% of enlisted women and 26% of women officers had been sexually harassed during the one year survey period while on duty, or on base or ship while off duty. Similarly, 4% of enlisted men and 1% of male officers reported being sexually harassed.

6-7 Apr 92 The Defense Equal Opportunity Management Institute hosts a workshop on the Uniform Code of Military Justice. Attendees represented all four armed services. Recognizing a disparity in judicial/nonjudicial punishment rates for minorities, the attendees reviewed previous research on the subject, decided upon factors to be considered in future research, and developed a proposal for conducting the necessary research.

30 Apr 92 The Navy releases NIS and Naval IG reports of investigation of the Tailhook convention.

18 Jun 92 Secretary of the Navy asks the DoD Inspector General to review the entire Tailhook matter.

14 Sep 92 The House Armed Services Committee releases a draft report, "Women in the Military: The Tailhook Affair and the Problem of Sexual Harassment." The report compares cultural changes in the military caused by racial integration and the war against drugs with the cultural changes necessary to cope with sexual harassment. Seven findings concerning sexual harassment are then presented.

17 Sep 92 The Subcommittee on Oversight and Investigations, House Committee on Veterans' Affairs holds hearings on "Sexual Harassment in the VA Workplace and VA Medical Care for Women Veterans Including Victims of Sexual Abuse During Military Service." The ASD (FM&P) presents testimony regarding DoD's policy and programs concerning sexual harassment.

21 Sep 92 The DoD IG releases the first of two reports on the 1991 Tailhook convention, "Tailhook 91 - Part 1, Review of the Navy Investigations." The report concludes that the scope of investigations should have been expanded beyond the assaults to encompass other violations of law and

regulation and that the inadequacies of the investigations were due to collective management and personal failures on the part of Navy leaders.

12 Apr 93

The DoD IG releases the second of two reports on the 1991 Tailhook convention, "Tailhook 91 - Part 2, Events of the 35th Annual Tailhook Symposium." The report documents 90 victims of indecent assault and establishes that 50 officers made false statements to investigators. It indicates that 140 officers and 35 flag and general officers have been referred to the Acting Secretary of the Navy for consideration of appropriate action. The report concludes that there had been a serious breakdown of leadership at the Tailhook convention in addition to the misconduct by persons attending.

Dec 93

The Navy Personnel Research and Development Center issues a report, "Sexual Harassment in the Active - Duty Navy: Findings from the 1991 Navy-Wide Survey." The survey indicated that 44% of enlisted women and 33% of women officers had been sexually harassed during 1991. This was up from 42% of enlisted women and 26% of women officers reporting harassment in 1989. The survey also found that 8% of enlisted men and 2% of male officers had experienced sexual harassment in 1991. This was up from 4% of enlisted men and 1% of male officers experiencing harassment in 1989.

Mar 94

Department of Defense Inspector General releases a report, "Review of Military Department Investigations of Allegations of Discrimination by Military Personnel." The report concludes that the majority of EO complaint investigations are sufficiently thorough to confirm or refute the allegations; That there is a lack of feedback and follow-up after the completion of investigative and disciplinary actions; That there is inconsistent analysis of discrimination complaints and inaccurate reporting on complaints due to the lack of standard definitions; and that communication between commanders and equal opportunity advisors is inhibited by the low rank of advisors which is not commensurate with their responsibilities.

9 Mar 94

The House Armed Services Committee holds hearings on "Sexual Harassment of Military Women and Improving the Military Complaint System."

15 Mar 94

Deputy Secretary of Defense John Deutch expresses concern that the DoD has yet to develop and fully implement policies and procedures necessary to rid the Department of sexual harassment. He asks the Secretary of the Air Force and the Under Secretary of Defense (Personnel and Readiness) to formulate a plan of action and calendar for developing and implementing such policies and regulations.

25 Apr 94

The Secretary of the Air Force and the Under Secretary of Defense (Personnel and Readiness) submit a sexual harassment policy plan to the Deputy Secretary of Defense. The plan has five main elements: (1) Work with Congress; (2) Develop a new DoD sexual harassment policy statement; (3) Establish a DEOC Task Force on Discrimination and Sexual Harassment; (4) Initiate a sexual harassment survey in the military; and (5) Implement senior leadership training.

13 May 94

First meeting of the DEOC Task Force on Discrimination and Sexual Harassment.

22 Aug 94

Secretary of Defense William Perry issues policy memorandum on, "Prohibition of Sexual Harassment in the Department of Defense (DoD)." The definition of "sexual harassment" is revised to adopt concepts from a 1993 decision of the U.S. Supreme Court. The seven sexual harassment program guidelines established in 1991 by Secretary Cheney are revised and expanded to eleven program guidelines.

**Annotated Bibliography of Reference Materials on Sexual
Harassment in the Files of the ODASD(EO)**

Annotated Bibliography of Reference Materials on Sexual Harassment in the Files of the ODASD (EO)

Articles

Beck, Lois M. "Sexual Harassment in the Army: Roots Examined." Minerva Vol. 9, No. 1, Spring 1991, pgs 29-40.

Reprint of essay done in 1979 or 1980. Definition of sexual harassment includes sexist remarks, physical assault, and rape. Based upon the author's experiences as an Army officer, the essay examines the nature and roots of sexual harassment and how it shows itself in real life situations. The author presents four conclusions, two of which deal with increased education.

Bennett - Alexander, Dawn D. "Hostile Environment Sexual Harassment: A Cleared View." Labor Law Journal Vol. 42, No. 3, March 1991, pgs. 131-143.

The author examines the first U.S. Supreme Court decision involving sexual harassment and the EEOC guidelines which the Court endorsed. The article concludes that the Court's decision left unanswered questions regarding what constitutes hostile environment sexual harassment. Eleven subsequent lower court opinions are summarized, however, which the author believes fill in most of the gaps left by the Supreme Court.

Bigelow, Donovan R. "Equal but Separate: Can the Army's Affirmative Action Program Withstand Judicial Scrutiny After *Croson*?." Military Law Review Vol. 131 Winter 1991 (DA PAM 27-100-131), pgs. 147-167.

*The article examines the Army's affirmative action program for promotions in light of the Supreme Court's decision in *City of Richmond v. J. A. Croson Co.* It briefly reviews the flow of case law prior to and since the seminal case of *Regents of the**

University of California v. Bakke, examines the analytical structure endorsed by the Court in Croson, and analyzes the Army's promotion system in terms of its consistency with the Croson standards. It concludes that the Army's success in overcoming both institutional and personal discrimination has made affirmative action programs superfluous. It recommends that the Army dismantle those portions of its affirmative action programs which cannot be justified on the basis of presently existing, individual discrimination.

Claypoole, Theodore F. "Inadequacies in Civil Rights Law: The Need for Sexual Harassment Legislation." Ohio State Law Journal Vol. 48, No. 4, 1987, pgs. 1151 - 1170.

The article argues that instead of clarifying the development of sexual harassment law, the Supreme Court decision in Meritor Savings Bank v. Vinson raised as many questions as it answered and left the lower courts to wade through a swamp of ambiguities. The author suggests, therefore, that the courts need legislative guidance in order to move confidently and uniformly in this area. The article concludes that the Congress should explicitly prohibit and regulate sexual harassment through the passage of new legislation.

Connell, Dana S. "Effective Sexual Harassment Policies: Unexpected Lessons from Jacksonville Shipyards." Employee Relations Law Journal Vol. 17, No. 2, Autumn 1991, pgs. 191 - 206.

The article suggests that although many employers recognize the need for an effective sexual harassment policy, they have received only limited guidance from the EEOC and the courts on how to draft one. The article then examines a decision by the Federal District Court for the Northern District of Florida in which the court imposed a comprehensive sexual harassment policy on an employer which consisted of a statement of policy; a statement of prohibited conduct; a schedule of penalties for misconduct; procedures for making, investigating, and resolving sexual harassment and retaliation complaints; and procedures and rules for education and training. The author suggests that employers should adopt similar comprehensive policies to better protect themselves from liability for sexual harassment.

DeParle, Jason. "About Men." The Washington Monthly, November 1988, pgs. 38 - 48.

Although the article focuses on college fraternities, the author discusses social values regarding hazing conformity, and views regarding women which may have applicability for college age military personnel.

Dodier, Grace M. "Meritor Savings Bank v. Vinson: Sexual Harassment at Work." Harvard Women's Law Journal Vol. 10, Spring 1987, pgs. 203 - 224.

The article posits that sexual harassment in the American workplace is a persistent problem for working women. The author reviews the background to the Supreme Court decision in Meritor; summarizes the Court's opinion; and analyzes its implications regarding the admissibility of evidence and standards of liability. The article concludes that the decision's shortcomings in endorsing the admissibility of evidence of sexual speech and clothing and its failure to articulate a clear standard of employer liability undermine its potential to remedy the problem of sexual harassment.

Greenlaw, Paul S. and John P. Kohl. "Proving Title VII Sexual Harassment: The Court's View." Labor Law Journal Vol. 43, No. 3, March 1992, pgs. 164 - 171.

The article examines five steps necessary to prove a sexual harassment case. Four of the steps are different for hostile environment cases vs. quid pro quo cases. The author questions if "hostile environment" can ever be defined with precision and recommends that attention be given to establishing parameters for the concept.

Griffin, Mary C. "Making the Army Safe for Diversity: A Title VII Remedy for Discrimination in the Military." The Yale Law Journal Vol. 96, No. 8, July 1987, pgs. 2082 - 2109.

The article reviews discrimination in the military and suggests that it is a serious problem today. The article then reviews statutory constructions which have limited the application of Title VII to military personnel. Specifically, military personnel cannot sue the military under the equal protection clause of the Fifth Amendment

because of "special factors" which dictate it would be inappropriate to provide enlisted personnel with an avenue to seek remedies against their superior officers. Second, although Title VII protects "employees" of military departments, military personnel are not considered to be employees. The article concludes that Title VII should apply to the military.

Horton, Amy. "Comments: Of Supervision, Centerfolds, and Censorship: Sexual Harassment, the First Amendment, and the Contours of Title VII." University of Miami Law Review, Vol. 46, No. 2, November 1991, pgs. 403 - 453.

The article summarizes the background to the Robinson v. Jacksonville Shipyards case. It analyzes this case by discussing sexual harassment and the First Amendment; the First Amendment in the workplace; the First Amendment defense to sexual harassment; and pinups as sexual harassment. It concludes that Robinson, if upheld, has potential for stopping short First Amendment defenses by providing an analysis of hostile environment discrimination.

Josefowitz, Natasha and Herman Gadon. "Hazing: Uncovering One of the Best-Kept Secrets of the Workplace." Business Horizons May-June 1989, pgs. 22 - 26.

The article attempts to disabuse the notion that hazing is a campus phenomenon and that it has a counterpart in the workplace. The authors discuss the purposes of hazing in the workplace, who does it, and when does it turn into harassment. They conclude that it is a long term phenomenon, which is not always benign and that it can, therefore, produce negative business affects if not controlled.

Larson, David Allen. "What Can You Say, Where Can You Say It, and to Whom? A Guide to Understanding and Preventing Unlawful Sexual Harassment." Creighton Law Review, Vol. 25, No. 3, April 1992, pgs. 827 - 854.

The author posits that employers and employees are confused as to what conduct is considered unlawful sexual harassment. The article summarizes the two basic theories of sexual harassment; quid pro quo and hostile environment. The article then examines in detail the post-Meritor court decisions and the factors that

combine to create a hostile environment. Topics examined include, prohibited conduct, meaning of "unwelcome," meaning of "severe or pervasive," abusive environment, employer liability, and remedies.

Martucci, William C. and Robert B. Terry. "Sexual Harassment in the Workplace: A Legal Overview." The Labor Lawyer, Vol. 3, No. 1, Winter 1987, pgs. 125 - 135.

The article reviews the 1980 EEOC guidelines on sexual harassment, the elements of proof necessary in sexual harassment cases, the limits of relevant evidence, the available remedies, and preventive measures in the emerging area of sexual harassment law. The author concludes that employers should not tolerate sexual harassment and that the desire to respond promptly to such complaints serves both the interest of employers and employees.

Morgenson, Gretchen. "Watch that Leer, Stifle that Joke." Forbes, May 15, 1989, pgs. 69 -72.

Article examines whether or not incidences of hazing, joking, and sexually suggestive talk between men and women in the workplace are increasing as alleged in the media. It concludes that the alleged increases in sexual harassment were the product of propaganda from self-interested parties.

Pollack, Wendy. "Sexual Harassment: Women's Experience vs. Legal Definitions." Harvard Women's Law Journal, Vol. 13, Spring 1990, pgs. 35 - 85.

The article traces the development of sexual harassment as a legal cause of action, citing two cases which illustrate how far courts will go to enforce gender hierarchy and legitimate the means of control which perpetuate women's subordinate position in the workplace hierarchy. Other cases are examined which highlight the elements necessary to prevail in a sexual harassment case. It concludes that only the most egregious forms of sexual harassment are outlawed because courts continue to sanction a gender hierarchy which shapes all interactions between men and women.

Riger, Stephanie. "Gender Dilemmas in Sexual Harassment Policies and Procedures." American Psychologist, Vol. 46, No. 5, May 1991, pgs. 497 - 505.

The article proposes that the reasons for a lack of use of sexual harassment grievance procedures, lie not in the victims, but in the procedures themselves. Women perceive sexual harassment differently than men do and their orientation to dispute resolution processes is likely to differ as well. The way that policies define harassment and the nature of dispute resolution procedures may better fit male than female perspectives. Such gender bias is likely to discourage women from reporting complaints.

Selden, Janet. "Employer Liability for 'Hostile Environment' Sexual Harassment, *Meritor Savings Bank, FSB v. Vinson*." Howard Law Journal, Vol. 31, No. 1, 1988, pgs. 51 - 65.

*The author posits that women have ceased to be workers and have become sexual victims, while employers, through their supervisory personnel, have become the perpetrators in a wave of emotional office crime. The article traces the history of employer liability for "hostile environment" sexual harassment and relates that history to the Supreme Court's decision in *Meritor*. The article concludes that the Court's decision in *Meritor* leaves open the circumstances in which an employer is responsible under Title VII for workplace sexual harassment.*

Simon, Howard A. "Ellison v. Brady: A 'Reasonable Woman' Standard for Sexual Harassment." Employee Relations Law Journal, Vol. 17, No. 1, Summer 1991, pgs. 71 - 80.

*In *Ellison*, the U.S. Court of Appeals for the Ninth Circuit rejected the traditional "reasonable person" standard for determining when a workplace is sufficiently hostile to constitute sexual harassment. The Court also suggested that employers will have to take substantial remedial measures - such as permanently separating the alleged harasser from the victim or even terminating the alleged harasser - in order to avoid liability in a hostile environment case. The article concludes that use of a "reasonable woman" standard will render some previously commonplace conduct actionable. In addition, in order to avoid liability, employers will have to learn greater sensitivity to the concerns and needs of women employees and will need to take greater*

responsibility to educate their workforces about the unique problem of pervasive sexual harassment in the workplace.

Vinciguerra, Marlisa. "The Aftermath of *Meritor*: A Search for Standards in the Law of Sexual Harassment." The Yale Law Journal, Vol. 98, No. 8, June 1989, pgs. 1717 - 1738.

The article argues that hostile environment sexual harassment claims have perplexed the courts and precipitated a doctrinal failure in sexual harassment law. The problem is seen as courts consistently defining harassment involving certain forms of economic detriment as hostile environment, which then limits quid pro quo cases to clear cut demands for sexual favors by supervisors. This practice reduces the availability of financial relief to the complainant because only quid pro quo violations carry back-pay awards.

Wilds, Nancy G. "Sexual Harassment in the Military." Minerva, Vol. 8, No. 4, Winter 1990, pgs. 1 - 16.

The article argues that there is a lack of understanding in the Services as to what actually constitutes sexual harassment; that no one actually knows how widespread the problem is in the Services; that commanders should recognize that their own attitudes are the most important single factor in their organization's discrimination/harassment profile; that women fear their complaints will not be believed; and that women need to learn how to handle most forms of harassment on their own.

Winterbauer, Steven H. "Sexual Harassment - The Reasonable Woman Standard." The Labor Lawyer, Vol. 7, No. 4, Fall 1991, pgs. 811 - 821.

*The article examines Federal court decisions in *Ellison v. Brady* and *Robinson v. Jacksonville Shipyards, Inc.* It concludes that use of the "reasonable woman" standard broadens the scope of Title VII and eliminates male bias from any analysis. Employers will now be challenged to examine workplace behavior from a wider perspective and to take more aggressive steps to keep employees' sexual conduct in check.*

Documents/Regulations

Commandant of the Marine Corps. "Department of the Navy (DoN) Toll-free Sexual Harassment Advice and Counseling Telephone Line," Message No. 1724, 221530Z Feb 93.

Provides information about the line and specifies CONUS and overseas numbers. Message stresses that the line is a source of advice and support and is not an investigative or reporting mechanism.

Commandant of the Marine Corps. "Equal Opportunity (EO) Advisors," Marine Corps Order 5354.3, September 8, 1993.

Order establishes standard operating procedures for EO advisors as well as the criteria for screening and selecting personnel to be EO advisors. Order requires that an EO advisor be assigned to major Marine Corps installations for a tour of 3 years. All advisors are to be trained at the DEOMI. Twenty-one duty stations where advisors are to be stationed are designated.

Commandant of the Marine Corps. "Marine Corps Bulletin 1900. Sexual Harassment: Administrative Separation Procedures," (ALMAR 85/92). Message 021959Z Apr 92.

Establishes policy that officers and enlisted personnel shall be processed for administrative separation following the first substantiated incidence of sexual harassment involving threats or attempts to influence another's career or job for sexual favors, rewards in exchange for sexual favors, or physical contact of a sexual nature which, if charged as a violation of the UCMJ, could result in a punitive discharge.

Commandant of the Marine Corps. "Military Equal Opportunity Climate Survey (MEOCS)," (ALMAR 37/93). Message 291500Z Jan 93.

Message encourages commanders with more than 50 Marines in their units who have not conducted a MEOCS in FY 92/93 to request a survey from the DEOMI.

Department of Defense. "The Department of Defense Military Equal Opportunity Program," DoD Directive 1350.2, dated December 23, 1988.

Establishes basic Department-wide guidelines for military equal opportunity programs. Responsibilities are outlined and terms defined, including sexual harassment. Reporting requirements are established and functions of the DEOC and DEOMI are outlined.

Department of Defense. "Affirmative Action Planning and Assessment Process," DoD Instruction 1350.3, dated February 29, 1988.

Establishes criteria for a Department-wide monitoring and reporting system for military equal opportunity (MEO) programs. Reporting categories and subjects for annual MEO assessments are specified. Sexual harassment is an item of interest in the section regarding complaints. A report format is required.

Department of Defense. Secretary of Defense. "Department of Defense Strategies to Eradicate Sexual Harassment in the Military and Civilian Environment." Memorandum dated July 12, 1991.

Requires seven point action plan to eradicate sexual harassment plus annual reports from the DoD Components updating their progress in implementing the policy and assessing the effectiveness of their programs.

Department of Defense. Secretary of Defense. "Equal Opportunity." Memorandum dated March 3, 1994.

Establishes and reemphasizes basic equal opportunity policy and highlights five key initiatives. No specific mention of sexual harassment.

Department of the Air Force. Headquarters USAF. Air Force Military Personnel Center. "Staff Assistance Visit Guide," (Air Force Pamphlet 30-41). May 22, 1986.

Pamphlet contains strategies and procedural guidance for conducting social actions unit staff assistance visits.

Department of the Air Force. Secretary of the Air Force. "Command Responsibility for Equal Opportunity." Memorandum dated February 9, 1994.

General policy statement co-signed by the Air Force Chief of Staff. Memorandum does not highlight sexual harassment.

Department of the Army. Headquarters. "Army Command Policy," Army Regulation 600-20, dated March 30, 1988, effective April 29, 1988.

Chapter 6, establishes basic policy on the "Equal Opportunity Program in the Army." It assigns responsibilities, establishes equal opportunity policy, defines sexual harassment, outlines chain of command responsibilities, specifies equal opportunity staffing requirements, identifies those on and off post activities covered by the regulation, specifies procedures for filing complaints, establishes training requirements, provides for narrative and statistical reports, discusses training at the DEOMI, and provides a calendar of equal opportunity special/ethnic observances.

Department of the Army. Headquarters. "Army Command Policy," Army Regulation 600-20, Interim Change No. I01, dated September 13, 1989.

Changes policy in paragraph 6-4. Sexual Harassment.

Department of the Army. Headquarters. "Army Command Policy," Army Regulation 600-20, Interim Change No. I02, dated April 1, 1992.

Changes policy in paragraph 6-4. Sexual Harassment; paragraph 6-6. Staffing; paragraph 6-8. Procedures for Processing Complaints; and other matters.

Department of the Army. Headquarters. "Army Command Policy," Army Regulation 600-20, Interim Change No. I04, dated September 17, 1993.

Replaces all of Chapter 6, "Equal Opportunity Program in the Army." Major changes include mandating training in EO throughout all phases of professional military education and twice annually in units; restructures the discrimination complaint system and introduces a standardized EO complaint form; and adds structure to the quarterly and annual unit EO complaint reports.

Department of the Army. Office of the Deputy Chief of Staff for Personnel. "Department of the Army Sexual Harassment Action Plan." March 5, 1993.

Plan stems from Chief of Staff of the Army testimony before the HASC in 1992, Secretary of the Army Human Resource Consultant trip reports, and feed back from commanders and equal opportunity advisors. Plan identifies six areas of concern and establishes goals and actions to resolve all concerns. Areas identified are: acts of sexual harassment; equal opportunity training; equal opportunity complaint system; institutional discrimination; leadership; and definition of sexual harassment. Most of the action steps in the plan were to be accomplished between February 1993 and February 1994. Five action steps, however, were identified as "ongoing" and three action steps were identified as "to be determined (TBD)." .

Department of the Army. Secretary of the Army. "Army Policy on Equal Opportunity" Memorandum dated January 25, 1994.

General policy statement on equal opportunity. Memorandum establishes "freedom from sexual harassment" as a standard for the Army.

Department of the Army. U.S. Army Research Institute. Army Personnel Survey Office. "Sexual Harassment: Active Component 1993 Survey Results." November 1993.

Briefing package contains eight slides, summary of the survey methodology, and a list of 48 findings from the survey. Key findings indicate that the rates of harassment continue to decline;

about 60% of all women experiencing harassment handled the incident themselves and did not file a complaint; men are more confident than women that the system is committed to creating a workplace free from harassment; and nearly one-quarter of all personnel did not receive any sexual harassment training in the previous twelve months.

Department of the Navy. Bureau of Naval Personnel. "Resolving Conflict...Following the Light of Personal Behavior," (NAVPERS 15620). 1993.

Describes and explains the Navy's Informal Resolution System (IRS) for resolving discrimination and sexual harassment issues.

Department of the Navy. Chief of Naval Operations. "Commander's Handbook for Prevention of Sexual Harassment," March 28, 1994.

The Handbook is intended to be a single source of information for commanders on the issue of sexual harassment. It summarizes all applicable Navy policies, discusses integration of sexual harassment prevention into a comprehensive equal opportunity program, provides a roadmap on how to handle sexual harassment complaints, discusses avenues for complainant redress/support services, describes the Navy's informal resolution system, and outlines options for correcting civilian and military offenders.

Department of the Navy. Office of the Chief of Naval Operations. "Navy Equal Opportunity," (OPNAVINST 5354.1C), April 13, 1989.

Instruction disseminates U.S. Navy Equal Opportunity Manual. Manual contains seven sections: EO responsibilities of commanders; EO responsibilities specific to shore commands; command managed EO; prevention of sexual harassment; Navy grievance procedures; incident handling and reporting; and Navy equal opportunity training.

Department of the Navy. Commandant of the Marine Corps. "Discrimination and Sexual Harassment Reporting Procedures," (Marine Corps Bulletin 5354.1). Distributed as ALMAR 058/94, dated February 25, 1994.

Requires commanders to track and report on all complaints of discrimination/sexual harassment. Establishes format for reporting data on each complaint.

Department of the Navy. Commandant of the Marine Corps. "Sexual Harassment." Marine Corps Order 5300.10A, July 17, 1989.

Establishes general policy regarding sexual harassment and disseminates DoD definition of sexual harassment. Requires a minimum of annual training for all personnel and emphasizes chain of command and request mast as the primary means of filing complaints.

Department of the Navy. Headquarters, U.S. Marine Corps. Equal Opportunity Branch (MPE). "Processing Equal Opportunity and Equal Employment Opportunity Complaints: A Commander's Handbook." no date.

Handbook discusses the military and civilian complaint systems; outlines the commanding officer's responsibilities concerning complaints; provides guidance to investigating officers on how to conduct an investigation; and provides guidance for correcting civilian and military offenders. No special mention of sexual harassment except to include a copy of the Navy's policy (SECNAVIVST 5300.26B) and outlining the various options under the UCMJ for charging discrimination or sexual harassment.

Department of the Navy. Secretary of the Navy. "Department of the Navy (DON) Policy on Sexual Harassment," SECNAVINST 5300.26B, January 6, 1993.

Establishes Department-wide policy on the identification, prevention, and elimination of sexual harassment. Provides a Navy definition of sexual harassment; identifies a range of behaviors which constitute sexual harassment; and establishes command responsibility and accountability.

Department of the Navy. Secretary of the Navy. "Optimal Integration of Women in the Department of the Navy." All Navy Message dated October 10, 1993.

General policy statement on the full utilization of women in the Navy which reaffirms the Navy commitment to eliminate sexual harassment.

Department of Transportation. United States Coast Guard. Office of the Commandant. "Available Administrative and Criminal Sanctions for Cases of Sexual Harassment," (Commandant Notice 5800) [ALCOAST Message 077/92], November 24, 1992.

List of Articles from the Uniform Code of Military Justice (UCMJ) which are applicable to various forms of sexual harassment. Commanders are encouraged to take appropriate action against offenders once they have sufficient information to reasonably believe sexual harassment has occurred. They do not have to wait for the completion of the formal investigation before acting.

Department of Transportation. United States Coast Guard. Office of the Commandant. "CH-7 to COMDTINST M5350.11B, Military Civil Rights Manual," (Commandant Notice 5350), April 21, 1994.

Change issues a new Chapter 5, "Procedures for Processing Complaints of Discrimination." Establishes the goal of the system as restoring the complainant to a "make whole" condition. Establishes a 60 day period for counseling and informal complaint resolution and a 120 day period from the time of filing a formal complaint to investigate the complaint and issue a final decision. There are interim timelines for each process. A complaint summary report is specified; format for written feedback to the complainant is specified; and a form for filing a formal complaint of discrimination is authorized.

Department of Transportation. United States Coast Guard. Office of the Commandant. "The Commandant's Diversity Policy Statement" (Commandant Note 5000, ALCOAST Message 053/94), June 1, 1994.

Defines "diversity as the uniqueness of all individuals and encompasses different personal attributes, values and

organizational roles. Policy emphasizes recognizing, understanding, and valuating personal differences and fostering and organizational climate which permits people to exercise their full potential.

Department of Transportation. United States Coast Guard. Office of the Commandant. "The Commandant's Human Relations and Sexual Harassment Policy Statements" (Commandant Instruction 5350.21, October 9, 1990.

Human Relations Policy Statement prohibits discrimination based upon race, color, religion, gender, age, national origin, or mental or physical handicap in any thought or action affecting personnel. Sexual Harassment Policy Statement establishes comprehensive program of zero tolerance.

Department of Transportation. U.S. Coast Guard. Office of the Commandant. "Discrimination Complaints in the Civilian Work Force," (Commandant Notice 12713), August 18, 1993.

Published summaries of six discrimination complaint cases intended to raise employee awareness and highlight the kinds of situations which lead to allegations of discrimination.

Department of Transportation. U.S. Coast Guard. Office of the Commandant. "1991/1992 Military Affirmative Action Plan (MAAP) Accomplishment and Assessment Report," (Commandant Notice 5350), May 20, 1994.

Review of 1991/1992 MAAP goals and a summary of actions taken which were intended to achieve each goal. Topics covered include valuing diversity, training and complaints, community outreach, recruiting ethnic minority officers, women, recruiting ethnic minority members and retention, Coast Guard Academy, and items requiring continuing attention

Department of Transportation. United States Coast Guard. Office of the Commandant. "U.S. Coast Guard Sexual Harassment Prevention System," (Commandant Instruction 5350.30), March 21, 1994.

While not superseding existing policy issuances, this Instruction consolidates and expands upon existing policy based upon improvements recommended by a Sexual Harassment Prevention Study Group. Terms are defined; command accountability and responsibility are stressed; a spectrum of sexual harassment behaviors and consequences is established; and guidance for commanders and supervisors is given regarding personal leadership, climate assessment, communications/marketing, and accountability.

Departments of the Army and Air Force. Headquarters. "Discrimination Complaint Processing System for National Guard Military Personnel," National Guard Regulation 600-22 and Air National Guard Regulation 30-3, dated July 15, 1992, effective October 1, 1992.

Establishes procedures for processing discrimination complaints, including sexual harassment; provides for investigation and resolution of complaints; and provides guidance on the establishment and contents of official discrimination complaint case files.

Equal Employment Opportunity Commission. Final Amendment to Guidelines on Discrimination Because of Sex (29 CFR 1604). Federal Register, Vol. 45, No. 219, November 10, 1980, pgs. 74676 - 74677.

Adds Section 1604.11, "Sexual Harassment" to the general guidelines on discrimination because of sex (29 CFR 1604).

Hearings

House of Representatives. Committee on Armed Services. "Sexual Harassment of Military Women and Improving the Military Complaint System." Transcript of testimony delivered on March 9, 1994.

Transcript includes opening statements by the Committee Chairman and Ranking Minority Member; testimony by a panel of four women, one officer and three enlisted persons, all of whom claimed to be victims of sexual harassment while on active duty in the military, and their responses to questions by Committee

members; testimony by a panel of four women experts, each of whom provided a personal or organizational perspective on the issue, and their responses to questions by Committee members; and testimony by a panel of four representatives from the DoD, each of whom outlined the policy and practice of their organization regarding sexual harassment, and their response to questions by Committee members.

House of Representatives. Committee on Armed Services. Subcommittee on Military Personnel. "Women in the Military." Hearings held November 13, 14, 15, 16, 1979 and February 11, 1980 (96th Congress 1st and 2nd Session) HASC No. 96-72. Washington, D.C.: U.S. Government Printing Office, 1981.

The hearings dealt with a number of issues concerning integration of women into the military. On February 11, 1980, the Subcommittee heard testimony from three civilian women who had been on active duty in the Army and one man and one woman currently on active duty in the Army. All five persons had served or were serving at Fort Meade, Maryland and all had observed or experienced sexual harassment. The Post Commander of Fort Meade testified about a series of newspaper articles which alleged widespread sexual harassment at the Fort. Four women flag/general officers then testified regarding their views toward or experiences with sexual harassment. Twelve enlisted women then responded to questions concerning their experiences with sexual harassment.

House of Representatives. Committee on Post Office and Civil Service. Subcommittee on Investigations. "Sexual Harassment in the Federal Government." Hearings held October 23, November 1, 13, 1979 (96th Congress 1st Session) Serial No. 96-57. Washington, D.C.: U.S. Government Printing Office, 1980.

First Congressional hearings on the subject. Citing an unofficial survey at the Department of Housing and Urban Development and a survey of Federal employees by the group New Responses, Inc., the subcommittee examined the issue of sexual harassment in the Federal government; a phenomenon it considered to be pandemic. The subcommittee concluded that there was no government-wide definition of sexual harassment; that there was no training for supervisors or employees to resolve the problem; that sexual harassment was widespread; and that the incidence of unreported

cases of sexual harassment was high. As a result of these hearings, the OPM was asked to issue a directive defining sexual harassment and making it a prohibited personnel practice and the MSPB was asked to initiate a survey concerning sexual harassment in the Federal workplace.

House of Representatives. Committee on Post Office and Civil Service. Subcommittee on Investigations. "Sexual Harassment in the Federal Government." (96th Congress 2nd Session) Committee Print No. 96-11, April 30, 1980. Washington, D.C.: U.S. Government Printing Office, 1980.

Summary of Subcommittee activities since it initiated investigation into sexual harassment in the Federal government in July 1979. The Subcommittee concluded that sexual harassment was pervasive and would be a major workplace issue in the 1980s. It presented 21 recommendations to encourage both the public and private sectors to fully address the problem.

House of Representatives. Committee on Post Office and Civil Service. Subcommittee on Investigations. "Sexual Harassment in the Federal Government (Part II)" Hearing held on September 25, 1980 (96th Congress, 2nd Session) Serial No. 96-112. Washington, D.C.: U.S. Government Printing Office, 1980.

Hearing focuses on the findings and conclusions in a preliminary report from the MSPB on its survey of Federal employees concerning sexual harassment, which was done at the request of the Subcommittee. Status reports on actions taken were also given by representatives from the OPM and the EEOC. The Subcommittee then reprinted Federal Department/Agency responses to a letter from the Subcommittee Chairman regarding their compliance with recent directives from the OPM and the EEOC.

House of Representatives. Committee on Veterans' Affairs. Subcommittee on Oversight and Investigations. "Sexual Harassment in the VA Workplace and VA Health Care for Women Veterans." Transcript of testimony delivered on September 17, 1992.

Transcript includes opening statements by the Subcommittee Chairman and Committee members; statement by the Hon.

Patricia Schroeder; testimony by a panel of six women, all employees of VA medical centers, and their responses to subcommittee member questions; testimony by a panel of four women, three of whom were veterans with medical problems and the fourth a VA representative, and their responses to subcommittee member questions; and testimony by a panel of Federal Agency representatives from the Department of Veterans' Affairs, the Department of Defense [ASD (FM&P)], and the VA Office of Inspector General, and their responses to subcommittee member questions.

International Materials

Canadian Forces Administrative Order 19-36, "Sexual Misconduct," no date.

Under this order, "sexual misconduct" means an act which has a sexual purpose or is of a sexual or indecent nature which constitutes an offense under the Criminal Code of the Code of Service Discipline. Some elements of sexual harassment (i.e., a pat on the behind) could be punishable as either a Criminal Code violation or an administrative sexual harassment violation.

Canadian Forces Administrative Order 19-38, "Mixed-Gender Relationships," no date.

This order establishes the standards of conduct for military members in public. Policy covers any personal relationship and outlines appropriate/inappropriate behaviors.

Canadian Forces Administrative Order 19-39, "Personal Harassment," no date.

Under this order, "personal harassment means improper behaviour by an individual that is directed at or is offensive to another individual; that is based on personal characteristics including, for example, race religion, sex, sexual orientation, physical characteristics, or mannerisms; and that a reasonable person ought to have known would be unwelcome." Also under this order, "sexual harassment is a type of personal harassment that has a sexual purpose or is of a sexual nature including, but

not limited to, touching, leering, lascivious remarks and the display of pornographic material."

National Defence Headquarters of Canada. Assistant Deputy Minister of Defence (Personnel). "Personnel Policy Review: Canadian Forces Approach to Harassment in the Workplace." April 1993.

Report of results of a comprehensive review of Canadian Forces policy and approach to the issue of harassment which was begun in 1992. The report makes a number of recommendations regarding changes to written policy, development of an implementation plan, stress on communication of policy and harassment awareness training programs for all members; and special harassment training programs for leaders and supervisors.

Legal Materials/Court Decisions

Equal Employment Opportunity Commission. "Enforcement Guidance on Harris v. Forklift Sys. Inc." EEOC Notice No. 92-1168, March 8, 1994.

This document constitutes the Commission's analysis of the impact of Harris on previously issued Commission regulations. The Commission concludes that Harris is consistent with its guidelines (29 CFR 1604.11) and its policy guidance (EEOC Notice N-915-050). Accordingly, no change is required in Commission policy or in the way it investigates charges.

Equal Employment Opportunity Commission. "Policy Guidance on Current Issues of Sexual Harassment." EEOC Notice N-915-050, March 19, 1990.

The document provides guidance to EEOC staff on the definition of sexual harassment and how to establish employer liability in light of recent cases.

"Legal Analysis: Sexual Harassment - A Title VII Violation." ORA Monthly Digest Vol. I, No. 4, March 1988, pgs. 8 - 14.

Summaries of court cases dealing with sexual harassment. Specific cases include Barnes v. Costle [561 F.2d 983 (D.C. Cir. 1977)]; Bundy v. Jackson [641 F.2d 934 (D.C. Cir. 1981)]; Rogers v. EEOC [454 F.2d 234 (5th Cir. 1971)]; Henson v. Dundee [682 F.2d 897 (11th Cir. 1982)]; and Meritor Savings Bank, FSB v. Vinson.

"Legal Analysis: An Update in Sexual Harassment." ORA Monthly Digest Vol. I, No. 8, August 1988, pgs 6-13.

Summaries of post-Vinson court cases dealing with sexual harassment, including: Hicks v. Gates Rubber Company [833 F.2d 1406 (10th Cir. 1987)]; McKinney v. Dole [765 F.2d 1129 (D.C. Cir. 1989)]; Hall v. Gus Construction Co., Inc. [842 F.2d 1010 (8th Cir. 1988)]; Jones v. Wesco Investments, Inc. [846 F.2d 1154 (8th Cir. 1988)]; Swentek v. USAIR, Inc. [830 F.2d 552 (4th Cir. 1987)]; Carrero v. New York City Housing Authority [668 F.Supp. 196 (S.D.N.Y. 1987)]; Sparks v. Pilot Freight Carriers, Inc. [830 F.2d 1554 (11th Cir. 1987)]; Henson v. Dundee [682 F.2d 897 (11th Cir. 1982)]; and Broderick v. Ruder [685 F.Supp. 1269 (D.D.C. 1988)].

"Sexual Harassment." The Digest of EEO Law (formerly ORA Monthly Digest). Vol. V, No. 2, December 1991, pgs. 9-15.

Article summarizes court cases on sexual harassment since last update in August 1988. New cases include Frink v. USPS [EEOC Appeal No. 01912399]; Cassida v. Department of the Army [EEOC Appeal Nos. 01893293 and 01893294]; McGinnis v. Defense Logistics Agency [EEOC Appeal No. 01902760]; Ellison v. Brady [924 F.2d 872 (9th Cir. 1991)]; Hannah v. Philadelphia Coca-Cola Bottling Co. [56 FEP Cases 1325 (E.D. Pa. 1991)]; and Stroehmann Bakeries, Inc. v. Local 776 International Brotherhood of Teamsters [762 F.Supp. 1187 (M.D. Pa. 1991)].

Meritor Savings Bank, FSB v. Vinson, et al. (477 U.S. 57) U.S. Supreme Court No. 84-1979, June 19, 1986

This is the first decision by the U.S. Supreme Court to deal with sexual harassment. The Court held that a claim of hostile environment sexual harassment is a form of sex discrimination actionable under Title VII; thereby endorsing the sex discrimination guidelines issued by the Equal Employment Opportunity Commission in 1980. The Court also held that the existence of a policy against discrimination and a grievance procedure coupled with a complainant's failure to use that system, do not protect an employer from liability for discrimination.

Teresa Harris v. Forklift Systems, Inc. U.S. Supreme Court No. 92-1168, November 9, 1993.

This is the second decision by the U.S. Supreme Court to deal with sexual harassment. The Court held that to be actionable as "abusive work environment," conduct need not "seriously affect [an employee's] psychological well being" or lead the plaintiff to "suffe[r] injury."

Miscellaneous Publications

"About Sexual Harassment in the Workplace," Booklet No. 48462. South Deerfield, MA: Channing L. Bete Co., Inc., 1989.

Cartoon style booklet which summarizes a definition of sexual harassment, common forms of harassment, how to prevent it, and what to do if you have been harassed.

"Harassment and Compensation: Today's Sex Discrimination Issues." Chicago, IL: Commerce Clearing House, Inc., 1981.

Topics summarized include: comparison of racial and ethnic harassment; new theory of sexual harassment; hazing of women on the job; retaliation for resisting unwelcome advances; offensive atmosphere and impact on work; and how to prevent sexual harassment.

Laurent, Anne. "Sexual Harassment, Drawing the Line: Your Rights and Responsibilities in the Federal Workplace." Springfield, VA: Federal Times, 1993

Booklet defines sexual harassment and gives examples of prohibited behavior. Procedures for dealing with sexual harassment are outlined and recommended actions for supervisors are made. Complaint filing procedures are outlined and suggestions regarding management options are made. Key legal decisions and laws are summarized.

Pexton, Patrick. "Sexual Harassment, Drawing the Line: Your Rights and Responsibilities in the Sea Services." Springfield, VA: Navy Times, 1993.

Suggestions are made for keeping sexual harassment out of units. Sexual harassment is defined and suggestions for dealing with it are made. Formal procedures for handling issues are outlined and suggestions given for preventive measures by supervisors.

Reischl, Dennis K. and Ralph R. Smith. "Sexual Harassment and the Federal Employee." Huntsville, AL: FPMi Communications, Inc., 1990.

Booklet outlines the definition of sexual harassment and applies it to actual workplace examples. How to recognize sexual harassment in work situations is also discussed. Procedures for dealing with sexual harassment are suggested

"What You Should Know About Sexual Harassment in the Workplace." Concordville, PA: Clement Communications, Inc., 1991.

Sexual harassment is defined and legal issues involving the concept are summarized. Strategies for dealing with sexual harassment are presented.

Papers

Hughes, Jean O'Gorman and Bernice R. Sandler. "Peer Harassment: Hassles for Women on Campus." Project on the Status and Education of Women, Association of American Colleges, September 1988.

Peer harassment is the most common form of sexual harassment in the military. This article discusses peer harassment of women on campus. A definition is offered. The prevalence and impact of peer harassment is discussed and examples given. Possible causes of peer harassment are discussed, legal considerations are outlined, and the role of institutions in dealing with peer harassment is debated. Recommendations for dealing with the problem are made and specific "dos and don'ts" for students are listed.

Rowe, Mary P. "Harassment Complaint Procedures: Consider a Systems Approach with Choices for Complainants." Massachusetts Institute of Technology, 1994.

The paper presents a number of practical questions which must be answered by any manager or organization that is designing or reviewing harassment complaint procedures. The paper then advocates an integrated dispute resolution systems approach that provides options - and choice of options - for most complainants.

Posters

Department of the Navy. Bureau of Naval Personnel. "Navy Procedures for the Processing of Sexual Harassment/Discrimination Complaints for Military Personnel,"(NAVPERS 15600). no date.

A 17"x22" poster which outlines the informal and formal complaint procedures as well as Navy policy on discrimination and sexual harassment.

Department of the Navy. Bureau of Naval Personnel. "Department of the Navy Sexual Harassment Advice Line," (NAVPERS 15619). no date.

A. 17"x11" poster which provides a toll-free, DSN, and commercial number for use by Department of the Navy personnel to obtain advice about sexual harassment issues. Operators are capable of handling questions on discrimination as well, but this is not indicated on the poster.

Department of the Navy. Bureau of Naval Personnel. "Resolving Conflict...Following the Light of Personal Behavior," (NP-15626). no date.

An 11"x17" poster intended to illustrate the Navy's informal resolution system (IRS). Also provides telephone numbers for the Navy-wide advice line.

Reports

Aspin, Rep. Lees and Rep. Beverly B. Byron. "Women in the Military: The Tailhook Affair and the Problem of Sexual Harassment." Washington, D.C.: House Armed Services Committee (?), September 14, 1992.

The report examines how to deal with sexual harassment in the military and how to achieve cultural change in the military. The report finds that there was a failure of senior leadership in the Navy in conducting oversight of the Tailhook convention activities. The report also finds that there are adequate programmatic and administrative tools in place in DoD to combat sexual harassment but that leadership may not be adequate to bring about the required cultural change. The type of cultural change necessary is equated to previous efforts to bring about racial integration in the military and the military's successful war against drugs.

Chief of Naval Operations. Navy Women's Study Group. "An Update Report on the Progress of Women in the Navy." Washington, D.C.: Chief of Naval Operations, 1991.

In 1990, the CNO created a group to review the implementation of the 1987 Study Group report, review existing policies and make

recommendations for change, and review issues such as sexual harassment and make recommendations. As in the 1987 report, Chapter 3 of the report included a review of sexual harassment issues. The report concludes, among other things, that sexual harassment is still a problem; that junior enlisted women are the most likely victims; that unwanted teasing and jokes are the most frequent form of harassment; that grievance procedures are not being used to resolve issues; and that the sexual harassment hotline needed more publicity. Nine specific recommendations for additional action are proposed.

Chief of Naval Operations. Study Group on Progress of Women in the Navy. "Navy Study Group's Report on Progress of Women in the Navy." Washington, D.C.: Chief of Naval Operations, December 5, 1987.

In 1987, the CNO created a group to review policies on the utilization of women in the Navy; examine issues affecting the quality of life, such as sexual harassment; and make recommendations for policy changes. Chapter III of the report reviews sexual harassment issues. It concludes, among other things, that sexual harassment is a problem; the grievance procedure is ineffective; many commanding officers are unaware of the extent of sexual harassment within their commands; there is a need for alternate methods of bringing harassment complaints to higher levels for resolution; there are two gaps in sexual harassment awareness and prevention training, one for department head aviators and the other for executive and commanding officers; and sexual harassment problems are exacerbated by inadequacies in leadership and educational systems.

Culbertson, Amy L., Paul Rosenfeld, Stephanie Booth-Kewley, and Paul Magnusson. "Assessment of Sexual Harassment in the Navy: Results of the 1989 Navy-wide Survey" (NPRDC-TR-92-11). San Diego, CA: Navy Personnel Research and Development Center, March 1992.

Forty-two percent of female enlisted and 26% of female officer respondents indicated that they had been sexually harassed during the 1-year survey period. Four percent of male enlisted and 1% of male officer respondents indicated that they had been sexually harassed during the 1-year survey period. Characteristics of

sexual harassment perpetrators are analyzed, along with actions of the victims after harassment. Survey results are compared with MSPB study of sexual harassment and DoD survey of sex roles in 1988-89.

Culbertson, Amy L., Paul Rosenfeld, and Carol E. Newell. "Sexual Harassment in the Active - Duty Navy: Findings from the 1991 Navy - Wide Survey" (NPRDC-TR-94-2). San Diego, CA: Navy Personnel Research and Development Center, December 1993.

Forty-four percent of female enlisted and 33% of female officer respondents indicated that they had been sexually harassed during the 1-year survey period. Eight percent of male enlisted and 2% of male officer respondents indicated that they had been sexually harassed during the 1-year survey period. These findings represent statistically significant increases from the 1989 survey. Report provides information about the type of harassment, characteristics of harassers and victims, and preventive actions taken from 1989 to 1991.

Department of Defense. Office of Inspector General. "Report of Investigation: Review of the Treatment of Women at the Naval Training Center, Orlando." (Case # S90C00000162). Arlington, VA: DoD IG, June 4, 1991.

Report summarizes the findings from a survey of 2,000 women using the DMDC 1988 survey of sex roles instrument; interviews of 168 personnel concerning sexual harassment and fraternization; review of investigations of rapes and indecent assaults from 1988-1990; and a review of installation policies concerning sexual harassment, fraternization, and indecent assault. Results compatible with the 1991 DMDC report of its 1988-89 survey results were found. There was a perception, however, that persons of high rank who fraternized had their indiscretions covered-up by subordinates, that victims of indecent assault were not adequately apprised of developments during the investigative and prosecutorial phases, and that organizations responsible for rape and assault investigations did not effectively coordinate their actions.

Department of Defense. Inspector General. "Report of Investigation: Tailhook 91 - Part 1, Review of the Navy Investigations." Arlington, VA: DoD IG, September 21, 1992.

Report summarizes events which occurred at the Tailhook convention and investigations conducted by the Naval Investigative Service (NIS) and the Naval IG. Report concludes that while investigations of the criminal assault allegations were generally good, the scope of investigations should have been broadened to include other violations of law and regulation as they became apparent. Report also concludes that inadequacies in the investigations were caused by collective management and personal failures of senior Navy leaders.

Department of Defense. Inspector General. "Report of Investigation: Tailhook 91 - Part 2, Events of the 35th Annual Tailhook Symposium." Arlington, VA: DoD IG, April 12, 1993. *Also for sale by the U.S. Government Printing Office, ISBN 0-16-041663-9.*

Report provides background on the Tailhook Association and its relationship with the Navy. Events which took place at the 1991 Tailhook convention are summarized including: squadron hospitality suites, indecent assaults, indecent exposure, other improper activity, hotel and Association security, and officer attitudes and leadership issues. Report finds that 83 women and 7 men were assaulted during the convention. One hundred seventeen (117) officers were implicated in one or more incidents of indecent assault, indecent exposure, conduct unbecoming an officer, or failure to act in a proper leadership capacity. Fifty-one persons were found to have made false statements to DoDIG investigators.

Department of Defense. Inspector General. "Review of Military Department Investigations of Allegations of Discrimination by Military Personnel." Arlington, VA: DoD IG, March 1994.

From Aug-Oct 1993, the DoDIG visited eight military installations and reviewed all documentation on 152 investigations of discrimination complaints. One hundred fifty-two persons, in varying capacities were also interviewed. The report concludes that 86% of the investigations contained sufficient evidence to support the conclusions drawn and were also considered by the DoDIG to be adequate investigations.

Department of Defense. Task Force on Women in the Military. "Report [of the] Task Force on Women in the Military." Washington, D.C.: Office of the Secretary of Defense, January 1988.

The Task Force on Women in the Military was created by the Secretary of Defense as a result of continuing concerns raised by the DACOWITS about the full integration of women in the military. The Task Force was chaired by the PDASD (FM&P) and had as members the Assistant Secretary for Manpower from each of the Military Departments; the J-1, OJCS; the Asst. Gen. Counsel (P&HP), DoD; and the Deputy Exec. Sec'y, Nat'l. Sec. Council. In its review of attitudes toward women in the Services, the Task Force specifically looked at the problem of sexual harassment. Among the Task Force recommendations were: (1) That a DoD-wide survey of sexual harassment be conducted in 1988; (2) That DoD adopt a standard definition of sexual harassment for use by all the Services; (3) That sexual harassment training be reviewed and expanded; and (4) That Service discrimination complaint systems be amended to provide for feedback and four other areas.

Department of the Navy. Naval Inspector General. "NAVINSGEN Study of the Command Managed Equal Opportunity (CMEO) Program" (Ser 03/3159). Memorandum dated August 9, 1993.

The report summarizes early equal opportunity efforts from 1971-1988. It notes that none of the commands visited for the study were in compliance with the minimum elements of the CMEO. It was further noted that there was a disparity in support for the CMEO and that many discrepancies noted had been identified previously by a Chief of Naval Operations Study Group in 1988. This report focuses on four problems: (1) Commanding officers do not understand or support the CMEO; (2) Equal Opportunity Program Specialists are not effectively utilized; (3) Command Assessment TReam training is ineffective; and (4) The Navy's Equal Opportunity Manual lacks direction, focus, clarity, and simplicity. The report makes 17 recommendations and requires quarterly status reports on implementation.

Gilden, Nina Beth. "Countering Sexual Harassment: Theory and Applications for the Department of Defense." Final report submitted to the Deputy Assistant Secretary of Defense (Equal Opportunity), March 1981.

The study assesses the causes, manifestations, and solutions to sexual harassment in the civilian and military workplace. The report recommends a broad definition of sexual harassment to be issued in SecDef guidance. It also discourages any military-wide survey of sexual harassment as superfluous or the use of hotlines because they will not be used for the purpose intended. Extensive and specialized training for all personnel is recommended.

Martindale, Melanie. "Sexual Harassment in the Military: 1988." Arlington, VA: Defense Manpower Data Center, September 1990.

Report provides results of survey of 20,250 active duty personnel in 1988-89 concerning sex roles in the military and sexual harassment. Sixty-four percent of female personnel and 17% of male personnel responding indicated they had experienced some form of sexual harassment in the year prior to the survey. Sexual teasing and jokes were most common (82% of women); followed by sexually suggestive looks, gestures, or body language (69% of women); and touching, leaning over, cornering, pinching, or brushing against (60% of women). Male co-workers, acting alone, were reported as the most common perpetrators.

Naval Inspector General. "Report of Investigation: Department of the Navy/Tailhook Association Relationship and Personal Conduct Surrounding Tailhook '91 Symposium" (Case # 920684) [FOUO]. Washington, D.C.: Naval Inspector General, April 29, 1992.

The report recommends that the Secretary of the Navy terminate all Department of the Navy support of the Tailhook Association; that the facts surrounding the Tailhook symposium be disseminated as well as corrective actions; that sexual harassment reeducation and prevention programs be developed; and that the aviation communities be required to demonstrate active programs for the deglamorization of alcohol.

Nixon, George John. "Gender Discrimination in the Civil Service: A Discriminant Analysis of U.S. Army Case Files." PhD Dissertation, Department of Political Science, University of Alabama, 1994.

The author reviewed 326 sex discrimination complaint case files processed by the Army in FY 1992. The study revealed that a majority of sexual harassment complainants were white women whereas a majority of all other sex discrimination complainants were minority women. Sexual harassment complainants were found to be younger than other sex discrimination complainants. a sizeable majority of complainants were white collar GS employees. Only 8% of sexual harassment complaints involved same-sex harassment, whereas 41% of all other sex discrimination complaints involved same-sex offenders. More than 75% of sexual harassment complaints involved supervisors whereas slightly more than 50% of all other sex discrimination complaints involved direct supervisors. More than half (56%) of all sexual harassment complaints in the Army came from just two of the 15 major commands in the Army.

Popovich, Paula M. "An Examination of Sexual Harassment Complaints in the Air Force for FY 1987," Summer Faculty Research Program (Rept #: DEOMI-88-5). Patrick Air Force Base: Defense Equal Opportunity Management Institute, September 30, 1988.

The study examined 163 formal complaints of sexual harassment filed in FY 1987. Most of the victims were found to be white enlisted women. Most of the confirmed harassers were found to be white enlisted men, generally of a higher grade than the victims. Black men, however, were found to be statistically significantly overrepresented in the confirmed harasser class. The most frequent behavior complained of was "offensive language." "Hostile environment" harassment was found to be more common than "quid pro quo."

Storey, Rosemary H. "Sexual Harassment in the Federal Government: An Update." Washington, D.C.: U.S. Merit Systems Protection Board, June 1988.

This report follows-up on an earlier report issued in 1981. The 1988 report presents information on a survey of Federal employees to which 8,523 person responded. Forty-two percent of all women and 14% of all men reported they had experienced some

form of unwanted and uninvited sexual attention in the survey period. Unwanted sexual teasing and jokes were the most frequent form of attention cited. Coworkers were much more likely than supervisors to be the harassers.

U.S. General Accounting Office. "Air Force Academy: Gender and Racial Disparities" (GAO/NSIAD-93-244). Washington, D.C.: U.S. General Accounting Office, September 1993.

At the request of the Chair of the Senate Committee on Armed Services, the GAO reviewed the treatment of minorities and women at the Air Force Academy. Specifically, GAO investigators looked for differences in performance indicators between men and women and between whites and minorities; student perceptions of fairness of treatment of minorities and women; and actions taken at the Academy to address disparities and improve the assimilation of minorities and women. Of 12 indicators used to measure performance, the GAO found that women did better than men in 2, men did better than women in 3 and in 4 there were mixed results. Using the same 12 indicators, GAO investigators found that whites did better than minorities in 7, minorities did better than whites in 1, and in 3 there were mixed results.

U.S. General Accounting Office. "Defense Force Management: Composition of Groups Affected by Fiscal Year 1991 Force Reductions" (GAO/NSIAD-92-31). Washington, D.C.: U.S. General Accounting Office, February 1992.

Responding to a request from the Chair of the Subcommittee on Military Personnel and Compensation, House Committee on Armed Services, the GAO compiled information on selected actions the Services had taken or might take to reduce the active force and on the race, sex, ethnicity of persons affected by those actions. The GAO concluded that persons reduced contained a higher proportion of minorities and women than the total population of their respective grades.

U.S. General Accounting Office. "Defense Force Management: Occupation Distribution and Composition" (GAO/NSIAD-92-85). Washington D.C.: U.S. General Accounting Office, March 1992.

At the request of the Chair, Subcommittee on Military Personnel and Compensation, House Committee on Armed Services, the GAO compiled information on the representation of minorities and women within the major occupation groups of the Armed Forces. The GAO found that in comparison to whites, blacks were overrepresented in engineering and maintenance, administrators, and supply/procurement. Women were overrepresented in health care and administrators. Among enlisted occupations, blacks were overrepresented in functional support and service and supply handlers.

U.S. General Accounting Office. "DoD Service Academies: Further Efforts Needed to Eradicate Sexual Harassment" (GAO/T-NSIAD-94-111). Washington, D.C.: U.S. General Accounting Office, February 3, 1994.

Statement by Mark E. Gebicke, Director, Military Operations and Capabilities Issues, National Security and International Affairs Division, General Accounting Office, before the Subcommittee on Force Requirements and Personnel, Committee on Armed Services, U.S. Senate. The statement summarizes the background to and results of the GAO's January 1994 report on sexual harassment at the academies. It goes on to indicate that sexual harassment continues at the academies, that women at the academies tend to deal with the problem informally, and that academy programs generally meet DoD guidelines. The statement then summarizes additional steps taken at the academies and presents other options for sexual harassment prevention programs.

U.S. General Accounting Office. "DoD Service Academies: More Actions Needed to Eliminate Sexual Harassment" (GAO/NSIAD-94-6). Washington, D.C.: U.S. General Accounting Office, January 1994.

At the request of the Chair of the Senate Armed Services Committee, the GAO reviewed the issue of sexual harassment at all three of the service academies. Specifically, GAO investigators examined the extent to which sexual harassment occurred at the academies, the forms it took, and its effects on those subjected to it. The investigators also evaluated the academies' efforts to eradicate sexual harassment. The GAO concluded that sexual harassment continues at the academies. Between 93% and 97% of academy women reported experiencing at least one form of sexual harassment during the previous year, most generally in the form of

derogatory comments. The GAO also found that the academies' sexual harassment prevention programs generally met DoD guidelines in all areas except inspector general reviews, which did not include sexual harassment prevention and education as an item of special interest. The GAO also concluded that the academies have not evaluated their sexual harassment eradication programs in a routine or systematic manner.

U.S. General Accounting Office. "Military Academy: Gender and Racial Disparities" (GAO/NSIAD-94-95). Washington, D.C.: U.S. General Accounting Office, March 1994.

At the request of the Chair of the Senate Committee on Armed Services, the GAO reviewed the treatment of minorities and women at the Military Academy. Specifically, the GAO investigators looked for differences in performance indicators between men and women and between whites and minorities; student perceptions of fairness of treatment of women and minorities; and actions taken at the Academy to enhance the success of women and minorities at the Academy. The investigators found that of 11 performance indicators examined, women consistently scored higher than men in 2, men scored consistently higher than women in 2, scores between men and women were about equal in 2, and results were mixed in 5. Investigators also found that using the same 11 indicators, whites scored higher than minorities in 8 and that results were mixed in 3.

U.S. General Accounting Office. "Naval Academy: Gender and Racial Disparities" (GAO/nsiad-93-54). Washington, D.C.: U.S. General Accounting Office, April 1993.

At the request of the Chair of the Senate Committee on Armed Services, the GAO reviewed the treatment of minorities and women at the Naval Academy. Specifically, GAO investigators looked for differences in performance indicators between men and women and between whites and minorities; student perceptions of fairness of treatment of women and minorities; and actions taken at the Academy to address disparities and improve the assimilation of minorities and women. The GAO found that women had higher SAT scores and Academy success predictor scores than men, but had lower grade point averages as first year students and lower class standings as fourth year students. Women also had lower military performance grades and rankings. Minorities had lower

SAT scores and Academy success predictor scores than whites and generally received lower grades and had lower class standings.

U.S. General Accounting Office. "Operation Desert Storm: Race and Gender Comparison of Deployed Forces with All Active Duty Forces" (GAO/NSIAD-92-111FS). Washington, D.C.: U.S. General Accounting Office, June 1992.

At the request of the Chair, Legislation and National Security Subcommittee, House Committee on Government Operations, the GAO compiled information comparing the representation of women and minorities among the troops deployed to Operations Desert Shield/Desert Storm with the representation of each group among all active duty military personnel. The GAO found that the representation of blacks among deployed troops was 3% higher than among all troops; the representation of white men was 4% lower; and the representation of women was 5% lower.

Training Materials/Lesson Plans

Anderson, Stephen and Trisha Brinkman. "Sexual Harassment: Facts vs. Expensive Myths - Management Personnel's Workbook." Denver, CO and San Francisco, CA: Anderson-davis, 1988.

Combination of reading material and exercises for use by management personnel to learn about sexual harassment. Materials include facts and myths about sexual harassment, definition of terms, background on law and regulations, how to work with complainants, dealing with harassers, and frequently asked questions.

Department of the Air Force. Headquarters USAF. Air Force Military Personnel Center. "Base Level Sexual Harassment Awareness Training Course -- Instructor Guide." June 1993.

Two hour course which reviews DoD and Air Force policy guidance; defines sexual harassment; reviews the various forms of sexual harassment; covers the effects of sexual harassment on the victim and the organization; and identifies the means for seeking

relief. The course concludes by reviewing the individual's role and the commander's/supervisor's responsibilities.

Department of the Air Force. Headquarters USAF. Air Force Military Personnel Center. "First Duty Station (FDS) -- Human Relations Education -- Student Handout," (Course # BL201AO), April 1987.

The FDS Orientation is a five hour program required for all military and civilian personnel within 30 days after arrival at their first permanent duty assignment. The orientation provides a brief historical review of the Air Force's approach to human relations. The DoD Human Goals Charter and various DoD and Air Force policy memoranda are reviewed. Students are shown how verbal and non-verbal symbols influence interpersonal/interracial/intercultural communication. The components of prejudice and discriminatory behavior are explained. Examples of arbitrary discrimination, including sexual harassment, are given. The effects of human relations issues on mission accomplishment are reviewed. The orientation concludes with an explanation of the individual's role in preventing and resolving equal opportunity and treatment (EOT) and equal employment opportunity (EEO) problems.

Department of the Air Force. Headquarters USAF. Air Force Military Personnel Center. "Social Actions Education Program," (Air Force Pamphlet 36-2702). July 1, 1993.

Pamphlet is a guide for planning and conducting Social Actions education presentations. It provides background information and descriptions of Social Actions education and awareness programs, techniques on developing lesson plans and speaking effectively, and a list of resources including current lesson plans available and a list of audiovisual resources.

Department of the Navy. Bureau of Naval Personnel. "Training Information Resource Library." Memorandum dated August 31, 1993.

Memorandum describes seven videos and seven books in the Navy's Training Information Resource (TIR) Library.

Department of the Navy. Chief of Naval Education and Training. "Command Training Team Indoctrination Course Student Guide," (Ser 00M4/174) September 25, 1992.

Memorandum transmits changes to the training materials for members of command action team inspection members. Specific changes included affect the Navy Rights and Responsibilities Workshop. Specifically, the "policy documents" and "grievance/redress procedures" lesson topics are affected. In the "policy documents" lesson, the Navy Equal Opportunity Manual is reviewed and the definition of sexual harassment and table of penalties for types of sexual harassment are included. In the "grievance/redress procedures" lesson, protection from reprisal is covered but only in the generic sense as being a part of the grievance system. Protection from reprisal for using the discrimination complaint process is not specified.

Department of the Navy. Chief of Naval Education and Training. "DON FY-94 Sexual Harassment Prevention and Informal Resolution System Training - Facilitation Guide," no date.

Training handbook which outlines the Navy's sexual harassment training program for FY94. Provides a summary of the video "Sexual Harassment in the Workplace...Identify. Stop. Prevent;" an outline of information about sexual harassment; suggested introductory remarks for use in the mandatory training; and suggested questions and answers for use during post training discussion.

Department of the Navy. Office of the Chief of Naval Operations. "The Prevention of Sexual Harassment and the Responsible Use of Alcohol -- Training Package." July 29, 1992.

Package of training materials disseminated for use during mandated one day training stand-down as part of post-Tailhook actions. Materials include a lesson plan for a 3-4 hour block of instruction on sexual harassment and discrimination complaint procedures; master slides to accompany the lesson plan; presentation of military and civilian case studies of harassment; bibliography of training resources for military and civilian personnel; and appendices with supplementary material.

Department of the Navy. Office of the Secretary. "Department of the Navy Informal Resolution System (IRS) Training Package." May 12, 1993.

The Basic training package contains three lesson plans and accompanying slides: (1) A senior level plan for Flag Officers, Senior Executive Service, Commanding officers O-5 and above, Sergeants Major, and Command Master Chiefs; (2) A mid-level plan for persons not classed as senior or entry; and (3) An entry-level plan for military and civilian personnel to be delivered within 90 days of accession. The basic package is supplemented by an IRS skills booklet [see "Resolving Conflict NP-15620 in documents above] and a Training Information Resource (TIR) Library [see videos below].

Department of Transportation. U.S. Coast Guard. Office of Civil Rights. "Coast Guard Civil Rights Standardized Training Facilitator's Guide." no date.

Four part training package which constitutes the Coast Guard's mandate triennial civil rights training for all members. Includes the masters for overhead slides as well as student handouts for four two-hour long workshops. Workshop topics are: sexual harassment; orientation; basic human awareness; and communications.

Headquarters, Department of the Army. "Commander's Equal Opportunity Handbook," (Draft Training Circular 26-6). Not yet issued, no date.

First of a kind document. Intended for primary use by company and battalion commanders, with some applicability for division and installation commanders. Seven chapters cover the Army's Equal Opportunity program; EO duties of unit leaders; leadership issues related to cultural diversity; prevention of sexual harassment; EO complaint process; EO climate assessment; and intervention and action planning.

Headquarters, Department of the Army. "Unit Equal Opportunity Training Guide," (DA PAM 350-20). Washington, D.C.: Headquarters, Department of the Army, August 30, 1993.

Publication contains fifteen lesson plans for use in conducting unit EO training as required by the Department of the Army. Masters for overhead transparancies and practical exercise handouts are also included. Lesson plan 4 is devoted to sexual harassment. It focuses on defining sexual harassment; identifying forms of sexual harassment; major components of EO programs; effects of sexual harassment; victims actions; and practical exercises. Sexual harassment lesson plan is designed for 60 minutes.

Headquarters, Department of the Army. "Unit Equal Opportunity Training Guide, Change 1," (DA PAM 350-20). Washington, D.C.: Headquarters, Department of the Army, anticipated publication July 1994.

Change contains new lesson plans for prevention of sexual harassment, EO violations subject to the UCMJ actions, and Army Equal Opportunity complaint procedures. The prevention of sexual harassment training is expanded from 60 minutes to 120 minutes. New topics include victim impact, sexual harassment checklist, coping mechanisms, components of prevention, and recommended techniques in dealing with sexual harassment. The equal opportunity complaint procedures lesson is expanded from 30 to 50 minutes. A new process, with a complaint form and timelines are introduced.

"Training Information Resource (TIR) Library Bibliography." No source specified. No date.

Marine Corps version of Department of the Navy, Bureau of Naval Personnel, training information resource library memo of August 31, 1993. Identifies seven books and eight videos in the resource library. Specifies addresses of seventeen locations which have a set of the books and videos available for loan.

United States Marine Corps. Human Resources Division. "Team Marine." December 10, 1993.

Complete training package consisting of a lesson plan, statement by the Commandant on Core Values, masters for overhead slides to accompany lesson plan, and a list of resources to supplement the training. The lesson plan covers the following topics:

teamwork, differences in people, perceptions of others, stereotypes, bias, prejudicial treatment, discrimination, racism, added stress, and corrective actions.

United States Marine Corps. Lesson Plans

United States Navy. Lesson Plans.

Enlisted Accession Point Training Course (NAVEDTRA 7538) --
[Time devoted to EO -- 1 hour 15 minutes] Course is in two sections: (1) equal opportunity introduction and sexual harassment/fraternization -- training objectives include EO as it applies within the Navy, definition of terms, prejudices we all have, prejudices that have no basis, individual responsibilities concerning EO, description of sexual harassment, terms associated with sexual harassment; individual's responsibility if being harassed, differences between sexual harassment and sexual discrimination, and types of verbal and physical harassment; and (2) command managed equal opportunity [CMEO] and grievance procedures -- training objectives include description of the CMEO program, why the CMEO program is needed, requirements the CMEO places on the chain of command, and results of the CMEO;

Senior Enlisted Academy (P-00-1300) -- [6 one hour blocks --
includes two videos totaling 39 minutes] Sexual Harassment and Fraternization. Topics include definition of sexual harassment, examples of sexual harassment, and discussion of case studies

Senior Warrant Officer School (Lesson 4.15) -- [length unknown]
Block of instruction on sexual harassment and fraternization
Consists of short required reading, case study, and discussion.

Officer Accession Point Training Course (NAVEDTRA 7535) --
[Time devoted to EO -- 1 hour 35 minutes] Course is in three sections: (1) equal opportunity introduction and sexual harassment/fraternization -- training objectives include EO as it applies within the Navy, definition of terms, prejudices we all have, prejudices that have no basis, individual responsibilities concerning EO, description of sexual harassment, terms associated with sexual harassment; individual's responsibility if being harassed, differences between sexual harassment and sexual discrimination, and types of verbal and physical harassment; (2)

command managed equal opportunity [CMEO] and grievance procedures -- training objectives include description of the CMEO program, why the CMEO program is needed, requirements the CMEO places on the chain of command, and results of the CMEO; and (3) responsibilities of leaders -- training objectives include leadership responsibilities for EO, areas in EO in which leaders must exercise good management practices, support available to leaders from Equal opportunity program specialists, requirements for incident handling and reporting, and command responsibilities for the EO program.

Equal Opportunity for Prospective Commanding Officers [2 hours 5 minutes] Topics covered include definition of EO, history of EO in the Navy, Navy CMEO improvement programs, review of the CMEO program, results of Navy-wide EO surveys, commanding officer's responsibilities for EO, and commanding officer case study. Training objectives include demonstrate understanding of Navy EO policy, procedures, and requirements; the need for commanding officer leadership in creating and maintaining a positive EO climate; the relationship between EO climate and commanding officer attitudes and actions; purpose and major content areas of the Navy Equal Opportunity Manual; informal and formal grievance procedures; and assess a case study involving a commander's EO actions.

Recruit Company Commander School [40 minutes] Topics covered include themes in EO, EO role of the recruit company commander, relationship between EO and discrimination, and EO responsibilities of the recruit company commander.

Videos

Department of Defense. Armed Forces Radio and Television Service. "DoD Defines Sexual Harassment." 3:00 minutes, 1988.

News story for Armed Forces Digest. Discusses newly issued DoD standard definition of "sexual harassment." Features Col William Walton, USAF, Director of Military Equal Opportunity, ODASD (CPP/EO).

Department of Defense. Armed Forces Radio and Television Service. "DoD Surveys Sexual Harassment." 1:30 minutes, 1988.

News story for Armed Forces Digest. Discusses decision to conduct survey of sexual harassment in the military. Indicates the survey was recommended by DoD Task Force on Women in the Military. Features Mr. David Armor, PDASD (FM&P).

Department of the Navy. "Sexual Harassment' Identify, Stop, Prevent." 37:23 minutes

Captain Greg Williams and Ms. Hanson, the civilian EEO officer, discuss the necessity of communicating to his senior staff that everyone has a right to work and serve in an environment free from sexual harassment. Ms. Hanson briefs him on the Navy's new informal resolution system (IRS).

At the staff meeting, Ms. Hanson briefs everyone on the legal history of sexual harassment, the Navy IRS, and the Navy's guidelines defining sexual harassment. A series of dramatic vignettes are shown and discussed with the staff.

The video concludes with Capt. Williams reviewing the IRS and the IRS booklet.

U.S. Coast Guard. "Sexual Harassment." 18:00 minutes.

**DoD Directive 1350.2, “The Department of Defense Military
Equal Opportunity Program,” December 23, 1988**



Department of Defense

DIRECTIVE

December 23, 1988
NUMBER 1350.2

ASD(FM&P)

SUBJECT: The Department of Defense Military Equal Opportunity Program

References: (a) DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program," April 29, 1987 (hereby canceled)
(b) DoD Human Goals Charter, March 21, 1988 (signed by the Secretary of Defense, Deputy Secretary of Defense, Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, and Service Chiefs)
(c) Secretary of Defense Memorandum, "Equal Opportunity for Military Members within the Department of Defense," May 2, 1988
(d) DoD Directive 5410.18, "Community Relations," July 3, 1974
(e) through (k), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a).
2. Regulates the Department of Defense Military Equal Opportunity (EO) Program and assigns responsibilities for ensuring DoD-wide compliance with the broad program objectives outlined in reference (b).
3. Provides for education and training in EO and human relations.
4. Prescribes the functions of the Defense Equal Opportunity Council (DEOC), the Defense Equal Opportunity Management Institute (DEOMI), and the Board of Visitors (BOV) to DEOMI.

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to all military members of the Office of the Secretary of Defense (OSD), the Military Departments (including their National Guard and Reserve components), the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.
2. Applies to DoD contracted organizations that provide services to military personnel and their families.
3. Does not apply to civilian personnel, except as noted in section B.2., above.

C. DEFINITIONS

The terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy to:

1. Support the military EO program as an integral element in total force readiness, as defined in the Secretary of Defense Memorandum (reference (c)), and enforce at all levels of activity the EO provisions of this Directive in developing operating EO policies and programs.
2. Use the chain of command to promote, support, and enforce the military EO program. The chain of command is the primary and preferred channel for correcting discriminatory practices and for ensuring that human relations and EO matters are enacted.
3. Ensure the Military Services (to include the Reserve components) maintain military EO and affirmative action programs. Discrimination that adversely affects persons or groups based on race, color, religion, gender, age, or national origin, and that is not supported legally, is contrary to good order and discipline, and is counterproductive to combat readiness and mission accomplishment. Discrimination of this nature shall not be condoned or tolerated.
4. Provide education and training in EO and human relations at installation and fleet unit commands, Military Service accession points, and throughout the professional military education (PME) system, as part of the overall effort to achieve equal opportunity.
5. Provide for an environment that is free from sexual harassment by eliminating this form of discrimination in the Department of Defense.
6. Ensure that all on-base activities and, to the extent of the ability of DoD, any off-base activities available to military personnel are open to all military personnel and their authorized family members regardless of race, color, religion, age, physical or mental handicap, gender, or national origin, as called for by the DoD Human Goals Charter (reference (b)).
 - a. Organizations or activities that do not meet this requirement shall be denied the use of military facilities and resources in accordance with DoD Directive 5410.18 (reference (d)). This policy applies equally to those organizations that may discriminate based on the content of their constitutions, bylaws, rules or regulations, as well as to those which, in the judgment of the responsible commander(s), are engaging in de facto discrimination regardless of the content of their constitutions, bylaws, rules or regulations.
 - b. Organizations that use on-base facilities, whether on a reimbursable basis or otherwise, must satisfy the responsible area or activity commander that they do not discriminate through their actual membership practices or in any of their activities.

7. Oppose discrimination in off-base housing directed against military personnel and their authorized family members. Each commander shall take actions to overcome such discrimination and to impose off-limits sanctions in housing cases, as required by DoD Instruction 1100.16 (reference (e)).

8. Impose, as required, the off-limits sanction according to the Armed Forces Disciplinary Control Board as stated in the Joint Regulation (reference (f)), in cases of discrimination involving places of public accommodations outside military installations.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

- a. Represent and advise the Secretary of Defense in military EO matters consistent with DoD Directive 5124.2 (reference (g)).
- b. Chair the Defense Equal Opportunity Council.
- c. Provide guidance on developing all DoD programs to ensure equal opportunity for military personnel in the total force.
- d. Develop, execute, and monitor the effectiveness of military EO policies in support of national security objectives.
- e. Ensure that DoD Components fulfill the requirements of this Directive.
- f. Provide policy direction to DEOMI and select the Commandant of DEOMI from Military Service nominations.
- g. Establish categories and monitor specific goals to be included in the affirmative action programs and annual military EO assessments of each DoD Component.
- h. Review and act on (or refer to appropriate Military Service) all complaints of discrimination arising under this Directive (to include sexual harassment) referred to the Secretary of Defense.
 - i. Ensure fair, impartial and timely investigation, resolution, and follow-up of all complaints of discrimination arising under this Directive at all levels within the Department of Defense.
 - j. Establish a program to recognize individuals and organizations for outstanding achievement in one or more of the major EO areas covered by this Directive.

2. The Heads of DoD Components shall be responsible for equal opportunity within their respective jurisdictions (to include their Reserve components) and shall:

- a. Ensure that all DoD EO policies and programs are understood and executed at all levels of military command.

b. Establish affirmative action programs that identify and resolve EO problems through formulating, maintaining, and reviewing affirmative action plans (AAPs) with established objectives and milestones and including accountability in personnel management consistent with DoD Instruction 1350.3 (reference (h)).

c. Forward a fiscal year report to the ASD(FM&P) outlining the progress being made to achieve the established military EO objectives of the AAP. This report shall be due each year on February 1, and is described further in reference (h).

d. Establish policies that include specific actions to be taken against any individual who commits an act of discrimination, as defined in enclosure 2 of this Directive.

e. Rewrite documents and change practices that discriminate against military personnel based on race, religion, color, gender, or national origin. This requirement does not apply to those Military Service documents that implement statutes or DoD/Service policy requiring different treatment of military personnel based on age or gender.

f. Establish policies and procedures to prevent sexual harassment and to ensure that appropriate action is taken against individuals who commit sexual harassment offenses, in accordance with the Secretary of Defense Memorandums (references (i), (j), and (k)).

g. Ensure that all military personnel, including command-selectees and flag and general officers, receive training in equal opportunity, human relations, and prevention of sexual harassment on a recurring basis, and at all levels of PME.

h. Establish and fill sufficient full-time staff positions and allocate sufficient resources to conduct all EO programs. Equal opportunity staff personnel shall be placed at a level that enables them to communicate effectively the goals and objectives of the program and obtain the understanding, support, and commitment of the organization's leaders.

i. Ensure that all discrimination complaints are investigated in a fair, impartial, and prompt manner.

j. Ensure that consideration of EO program support is included in the instructions that guide rating officials in preparing efficiency reports and/or evaluations on their subordinates.

k. Develop management information and reporting systems to determine the progress for each AAP goal consistent with DoD Instruction 1350.3 (reference (h)).

l. Establish EO awards programs to recognize individuals and organizational units for outstanding achievement in any of the EO areas covered by this Directive or Military Service-unique programs.

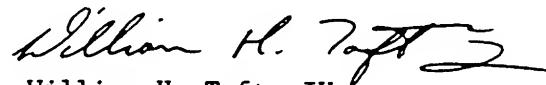
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F. INFORMATION REQUIREMENTS

An annual report is required and is assigned Report Control Symbol DD-FM&P(A)1760. Reporting requirements are contained in enclosure 3 and further amplified in DoD Instruction 1350.3 (reference (h)).

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.



William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 4

1. References
2. Definitions
3. Military EO Reporting Requirements
4. Organizations and Functions

REFERENCES, continued

- (e) DoD Instruction 1100.16, "Equal Opportunity in Off-Base Housing," June 2, 1977
- (f) Joint Regulation--AR 190-24, MCO 1620.2, AFR 125-11, COMDTINST 1620.1A, "Armed Forces Disciplinary Control Boards and Off-Installation Military Enforcement Services," January 11, 1972
- (g) DoD Directive 5124.2, "Assistant Secretary of Defense (Force Management and Personnel)," July 5, 1985
- (h) DoD Instruction 1350.3, "Affirmative Action Planning and Assessment Process," February 29, 1988
- (i) Secretary of Defense Memorandum, "Sexual Harassment and Discrimination," December 24, 1986
- (j) Secretary of Defense Memorandum, "DoD Definition of Sexual Harassment," July 20, 1988
- (k) Secretary of Defense Memorandum, "Responsibility for Maintaining a Work Force Free of Sexual Harassment," September 2, 1988

¹ Available through Army, Navy, Air Force, Marine Corps, or U.S. Coast Guard publication distribution channels.

DEFINITIONS

1. Affirmative Action. Methods used to achieve the objectives of the EO program. Processes, activities, and systems designed to identify, eliminate, prevent, and work to overcome the effects of discriminatory treatment as it affects the upward mobility and quality of life for DoD personnel.
2. Discrimination. Illegal treatment of a person or group based on handicap, race, color, national origin, age, religion, or gender.
3. DoD Military Equal Opportunity (EO) Program. The DoD-wide military program of equal opportunity that is accomplished through efforts by DoD Components. It provides an environment in which every member of the total force is ensured an opportunity to rise to as high a level of responsibility as possible in the military profession, dependent only on merit, fitness, and capability.
4. Equal Opportunity (EO). The right of all persons to participate in and benefit from programs and activities for which they are qualified. These programs and activities shall be free from social, personal, or institutional barriers that prevent people from rising to as high a level of responsibility as possible. Persons shall be evaluated only on individual merit, fitness, and capability, regardless of race, color, gender, national origin, age, or handicap except as prescribed by statute, or DoD/Service policy.
5. Ethnic Group. A segment of the population that possesses common characteristics and a cultural heritage based to some degree on the following:
 - a. common geographic origin;
 - b. race;
 - c. language or dialect;
 - d. religious faith or faiths;
 - e. shared traditions, values, or symbols;
 - f. literature, folklore, or music;
 - g. an internal sense of distinctiveness; and/or
 - h. an external perception of distinctiveness.
6. Ethnic and Racial Categories. The basic racial and ethnic categories for DoD reporting are defined as follows:
 - a. American Indian or Alaskan Native. A person having origins in the original peoples of North America.
 - b. Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.

c. Black (Not of Hispanic Origin). A person having origins in any of the original peoples of Africa.

d. Hispanic. A person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, or Central or South America, or of other Spanish cultures, regardless of race.

e. White (Not of Hispanic Origin). A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

7. National Origin. An individual's or ancestor's place of origin. Also applies to a person who has the physical, cultural, or linguistic characteristics of a national group.

8. Race. A division of humans identified by the possession of traits that are transmissible by descent and that are sufficient to characterize as a distinctive human type.

9. Religion. A personal set or institutionalized system of attitudes, moral or ethical beliefs, and practices that are held with the strength of traditional religious views, characterized by ardor and faith, and generally evidenced through specific religious observances.

10. Sexual Harassment. A form of sex discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

a. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

b. submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

c. such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

MILITARY EQUAL OPPORTUNITY REPORTING REQUIREMENTS

Each DoD Component shall submit an annual Military Equal Opportunity Assessment (MEOA) for the period ending September 30 to the ASD(FM&P) no later than February 1 of the following year. The report shall include the following information:

A. An executive summary, providing an overall assessment of each DoD Component's AAPs and EO Programs.

B. An assessment of each affirmative action in the following 10 categories shall be made an enclosure to the report. The assessment in each category should include quantitative data in the basic race/ethnic classifications for officers and enlisted personnel broken down by gender.

1. Recruiting/Accessions
2. Composition
3. Promotions
4. Professional Military Education (PME)
5. Separations
6. Augmentation/Retention
7. Assignments
8. Discrimination/Sexual Harassment Complaints
9. Utilization of Skills
10. Discipline

C. Requirements are further explained in DoD Instruction 1350.3 (reference (h)).

ORGANIZATIONS AND FUNCTIONS

1. The Defense Equal Opportunity Council (DEOC) shall:

- a. Coordinate policy and review the military and civilian EO programs.
- b. Monitor progress of program elements.
- c. Advise the Secretary of Defense on policies for EO matters.
- d. Assist in developing policy guidance for education and training in EO and human relations for DoD personnel.

2. The DEOC is Chaired by the Assistant Secretary of Defense for Force Management and Personnel (ASD(FM&P)). Other members are the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)); the Assistant Secretary of the Air Force for Manpower and Reserve Affairs (ASAF(M&RA)); the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA(MRA)); the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN(M&RA)); and the Director of Administration and Management, Office of the Secretary of Defense (DA&M(OSD)).

3. DEOMI is a DoD Field Activity Operating Under the Supervision, Direction, and Policy Guidance of the ASD(FM&P). Located as a tenant on an established military installation, DEOMI shall be supported administratively and logistically by the Military Department responsible for the host installation.

a. The mission of DEOMI is to enhance combat and/or operational readiness through improved leadership by functioning as the DoD center of excellence in all facets of military EO and human relations education and training to include the following:

(1) Providing primary training for all DoD military and civilian personnel assigned to military EO billets (to include the U.S. Coast Guard), and staff officers who directly manage EO and human relations programs.

(2) Performing EO and human relations research in conjunction with the Military Services and acting as a clearing house to monitor and disseminate research findings on EO and human relations.

(3) Providing assistance or consultation services to DoD organizations in developing specific curricula and training for EO and human relations education, and particular training for the PME systems within the Military Services; and serving in an advisory capacity to other Agencies in education, industry, and the private sector, as determined by the Commandant.

(4) Disseminating educational training materials to assist EO advisors and human relations instructors in remaining current in the EO subject area and in otherwise developing professionally.

(5) Performing special research-related projects in support of the DEOC.

(6) Operating and administering the Defense EO Electronic Bulletin Board to support EO advisors and specialists throughout the Military Services.

(7) Serving as a focal point and depository for data and research on the EO climate and sexual harassment in the Military Services.

b. The following applies to appointments to DEOMI:

(1) The Commandant shall be appointed by the ASD(FM&P). This position shall rotate among representatives nominated by the Departments of the Army, Navy, and Air Force.

(2) The ASD(FM&P) shall establish criteria for assigning officers and enlisted personnel from the Military Departments, including the Coast Guard, National Guard, and Reserves to faculty and staff positions at DEOMI.

4. The DEOMI BOV is an Advisory Body to the ASD(FM&P). The Board is established by charter and serves as an external source of expertise to ensure periodic review of the objectives, policies, and operations of DEOMI.

**DoD Instruction 1350.3, "Affirmative Action Planning and
Assessment Process," February 29, 1988**



Department of Defense INSTRUCTION

February 29, 1988
NUMBER 1350.3

ASD(FM&P)

SUBJECT: Affirmative Action Planning and Assessment Process

References: (a) DoD Directive 1350.2, "The Department of Defense Military Equal Opportunity Program," April 29, 1987
(b) Office of Management and Budget (OMB) Directive 15, "Race and Ethnic Standards for Federal Statistics and Administrative Reporting," May 1978

A. PURPOSE

This Instruction supplements reference (a) by prescribing DoD policy, assigning responsibilities, and establishing minimum reporting requirements by category and subject for annual Military Equal Opportunity Assessments (MEOA) submitted to the Assistant Secretary of Defense for Force Management and Personnel (ASD(FM&P)) by the Military Services. It emphasizes the use of stand-ardized procedures that support longitudinal analysis throughout the Department of Defense and recognizes Service and/or Component prerogatives in establishing goals and objectives and taking affirmative action toward their accomplishment. This Instruction establishes common report formats for use in the annual MEOA.

B. APPLICABILITY AND SCOPE

This Instruction:

1. Applies to the Office of the Secretary of Defense (OSD) and the Military Services (including their National Guard and other Selected Reserve components). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.
2. Does not apply to the United States Coast Guard, whose civil rights program is governed by the Department of Transportation. Nor does this Instruction apply to the other two Uniformed Services, namely, the Commissioned Corps of the National Oceanic and Atmospheric Administration, Department of Commerce, or the Public Health Service, Department of Health and Human Services.

C. POLICY

It is DoD policy for the Military Services to monitor and report on selected dimensions of their personnel programs to ensure equal opportunity and fair treatment for all Service members through affirmative actions and other initiatives. It is the prerogative of the Services to establish requirements for affirmative action plans and assessments at organizational levels below Service headquarters.

D. DEFINITIONS

Terms used in this Instruction are defined in enclosure 1.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), consistent with DoD Directive 1350.2 (reference (a)), shall establish categories and monitor specific actions included in the Affirmative Action Plan(s) (AAP) of each Military Component. This shall include providing a written analysis of each MEOA to the Services, as well as preparing a DoD summary.
2. The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)) shall assist in the analyses of Reserve component MEOAs.
3. The Secretaries of the Military Departments shall ensure that the Military Components (to include Active, National Guard, and Reserve) implement the Affirmative Action Planning and Assessment Process in accordance with this Instruction. Use of statistical tests and other evaluative techniques are encouraged.

F. INFORMATION REQUIREMENTS

1. Each Service shall provide to the ASD(FM&P) a copy of its current AAP(s) with schedules for revision. New editions and/or changes shall be furnished upon publication. Active and Reserve component AAPs may be contained in separate sections of a Service AAP or may be prepared and maintained as separate documents.
2. An annual MEOA is required by DoD Directive 1350.2 (reference (a)) and assigned Report Control Symbol DD-FM&P(A)1760. Reporting requirements are contained in enclosure 3 of that Directive and further clarified in enclosure 2 of this Instruction. Assessments must include all DoD Active and Selected Reserve components, but data on Components should not be consolidated.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately and applies to assessments for FY 88 due to FM&P February 1, 1989. Forward one copy of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 90 days.

Enclosures - 3

1. Definitions
2. Reporting Categories and Subjects for MEOA
3. DD Form 2509 (Sample)



Grant S. Green, Jr.
Assistant Secretary of Defense
Force Management and Personnel

DEFINITIONS

NOTE: Definitions contained in enclosure 2 of DoD Directive 1350.2 (reference (a)) are incorporated by reference in this Instruction.

1. Affirmative Action Plan (AAP). A Service and/or Component document that may contain initiatives, processes, systems, activities, objectives, goals, and milestones that have been established to achieve the objectives of the equal opportunity program. The AAP is a management tool intended to assist in overcoming the effects of discriminatory treatment as it affects equal opportunity, upward mobility, and the quality of life for military personnel.
2. Affirmative Action Planning and Assessment Process. A systems approach to MEO initiatives that encompasses the AAP, the MEOA, and the DoD Summary Analysis of MEO.
3. Affirmative Action Plan Reporting Category. One of the ten categories listed in enclosure 3 of DoD Directive 1350.2 and included in Service and/or Component AAPs, for which annual assessments are required from the Services in the manner prescribed by this Instruction. These ten are the minimum reporting requirements but the Services may add additional categories as they deem appropriate.
4. DoD Summary Analysis of Military Equal Opportunity. The annual written evaluation of Service MEOA submissions prepared by ASD(FM&P). Normally, this summary evaluation will be prepared within 90 days of submission of the Services' MEOAs.
5. Military Equal Opportunity Assessment (MEOA). An annual report covering the previous fiscal year, due to ASD(FM&P) no later than February 1 of the current year. The MEOA displays and analyzes, by Affirmative Action Plan Reporting Category, the data required by enclosure 3 to DoD Directive 1350.2 (reference (a)), and further described in this Instruction. The MEOA is designed to measure the effect of affirmative actions and initiatives (as determined by proponents) as well as provide the rationale for establishing and updating AAP milestones and/or creating new goals.
6. Military Equal Opportunity Assessment Subjects. Any of the many prescribed or optional subcategories that are reported annually by the Services within the Affirmative Action Plan Reporting Categories contained in the MEOA.
7. Tracked Group. One of the ethnic or racial categories designated by OMB Directive 15 (reference (b)). These are defined in enclosure 2 of reference (a).
8. Trend (or Longitudinal) Analysis. A numerical and narrative comparison of specific elements of data over time for evidence of change or relative fluctuation.

REPORTING CATEGORIES AND SUBJECTS
for
ANNUAL MILITARY EQUAL OPPORTUNITY ASSESSMENT
(MEOA)

DoD Directive 1350.2 (reference (a)) requires that each Military Department submit an annual report for the period ending September 30 to the ASD(FM&P) no later than February 1 of the following year. Each MEOA shall include an Executive Summary, plus specified data and narrative assessments. Enclosure 3 of that Directive lists the ten categories that are to be included in the annual MEOA. While organizations may benefit from monitoring items not listed (e.g., awards and other recognition programs), these ten categories are the minimum reporting requirements for the MEOA.

This enclosure provides further guidance on MEOA reporting requirements by subject in each of the ten categories. Again, organizations may opt to assess additional subjects for a particular time period within each category, such as Joint Duty Assignments within Category 7, but those listed are the minimum subject requirements.

In all categories, narratives that begin on the face of a form may be continued on blank sheets behind the form. The MEOA shall be submitted in three copies; it shall be an 11" horizontal by 8½" vertical document, bound on the left. Both sides of pages may be used.

1. RECRUITING AND/OR ACCESSIONS

a. Each accession program listed below is considered a separate reporting subject and a DD Form 2509 (enclosure 3) shall be prepared for assessing each of the subject programs, as applicable.

(1) Enlisted

(a) Non-prior service.

(b) Prior service (not reenlistments).

(2) Officer (Commissioned)

(a) Reserve Officers' Training Course (ROTC) (scholarships identified separately).

(b) Service Academy.

(c) Officer Candidate or Training School (OCS or OTS).

(d) Non-line and/or direct commission.

(e) Enlisted commissioning program.

(f) Professional Branches (Legal, Chaplain and Medical).

(g) Other Service-unique programs.

(3) Officer (Warrant) - as applicable, assess separately by Service and/or Component

(a) Flight training programs.

(b) Other programs in aggregate (due to small numbers).

b. For the Enlisted subject reports, columns 5A, 6A, and 7A of DD Form 2509 (enclosure 3) shall be used to list actual numbers entering the Service during the reporting period. Columns 5B, 6B, and 7B will list TOTAL numbers (from all tracked groups) accessed during the reporting period. Column 5C, 6C, and 7C entries result from dividing the A column figures by the respective B column figures. Entries in the C column shall be displayed as decimal figures, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

c. For the reports on Officer subjects, the actual numbers who were accessed through (i.e., successfully completed) the subject programs shall be listed in columns 5A, 6A, and 7A of DD Form 2509 (enclosure 3). Columns 5B, 6B, and 7B shall list total numbers accessed in the reporting period in the same grade group categories from all sources. Column 5C, 6C, and 7C entries will result from dividing the A column figures by the respective B column figures. Entries in the C column shall be displayed as decimal figures, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

d. Current-year data shall be reported and assessed on the face of DD Form 2509 (enclosure 3); continuation sheets may be used as needed. Data for the previous 3 years will be provided on the reverse side of the form. (Note: the MEOA due to the ASD(FM&P) in February 1989 shall include FY 88 data plus the data from FY 87. The MEOA due in February 1990 shall add the data for FY 89, and the MEOA due in February 1991 shall add FY 90 data.)

2. COMPOSITION

a. Effective September 30, 1987 the Defense Manpower Data Center began preparing a DMDC-3035EO report that will be computer-generated quarterly and forwarded through the ASD(FM&P) to each of the Military Services. This report displays force composition by the following four subjects for each Service, and/or Component, and the Department of Defense:

- (1) Commissioned Officer.
- (2) Warrant Officer (if applicable).
- (3) Enlisted.
- (4) Total.

b. This category does not require the use of DD Form 2509 (enclosure 3). The numbers reported in this category shall constitute the data base for all other MEOA categories. The computer printout sheets shall be photocopied and

reduced so that they will be the same size as the other pages of the MEOA. The MEOA due to the ASD(FM&P) in February 1989 shall include the DMDC-3035EO reports for both September 1987 and September 1988.

3. PROMOTIONS

a. Assessments shall be made of promotions that result from a centralized Service-wide selection process.

b. At least the following subjects shall be assessed in this category:

- (1) Promotions to Grade O-4.
- (2) Promotions to Grade O-5.
- (3) Promotions to Grade O-6.
- (4) Promotions to Grade E-7.
- (5) Promotions to Grade E-8.
- (6) Promotions to Grade E-9.

A separate DD Form 2509 (enclosure 3) shall be prepared for each subject.

c. Officer and enlisted promotions shall be assessed based on the date of selection, not the date of promotion. Data shall include all individuals considered in and selected from within the primary zone; any optional assessments based on other than primary zone selections (i.e., other than within the zone promotions) shall not be merged in the MEOA. For the Reserve components, the selection and promotion zone data need not be restricted to the Selected Reserve but rather should reflect all Reservists in an active status actually under consideration by a board.

d. On DD Form 2509 (enclosure 3), columns 5A, 6A, and 7A shall be used to list actual numbers (by tracked groups) selected for promotion within the period of the report. Columns 5B, 6B, and 7B shall list the total number considered for promotion as specified in paragraph 3.c., above. Column 5C, 6C, and 7C entries are the results of dividing the figures in the A columns by the figures in the respective B columns. Entries in the C column shall be displayed as decimal figures, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

e. Current-year data shall be reported and assessed on the face of DD Form 2509 (enclosure 3); continuation sheets may be used as needed. Data for the previous 3 years shall be provided on the reverse side of the form. (Note: the MEOA due to the ASD(FM&P) in February 1989 shall include FY 88 data plus the data from FY 87. The MEOA due in February 1990 will add the data for FY 89, and the MEOA due in February 1991 shall add FY 90 data.)

4. PROFESSIONAL MILITARY EDUCATION

a. This assessment category does not include the Legal, Medical or Chaplain professional education systems. Rather, this assessment pertains to the general category of professional military education. A separate DD Form 2509 (enclosure 3) shall be prepared for each of the subjects listed below having a selection process:

(1) Officer

- (a) Senior service school.
- (b) Intermediate-level school.
- (c) Career-level school (as applicable).

(2) Noncommissioned Officer (NCO) - Any school meeting criteria listed above

b. On DD Form 2509 (enclosure 3), columns 5A, 6A, and 7A shall be used to list the actual numbers selected (or designated) for school. Columns 5B, 6B, and 7B shall list the numbers considered for selection (by tracked groups). When the term "considered" is not applicable for a particular school, columns 5B, 6B, and 7B shall display the total number in the modal grade of selection (i.e., the grade from which the largest number of selections was made). Column entries for 5C, 6C, and 7C result from dividing the figures in the A columns by those in the respective B columns. Entries in the C column shall be displayed as decimal figures, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

c. Current-year data shall be reported and assessed on the face of DD Form 2509 (enclosure 3); continuation sheets may be used as needed. Data for the previous 3 years shall be provided on the reverse side of the form. (Note: the MEOA due to the ASD(FM&P) in February 1989 shall include FY 88 data plus the data from FY 87. The MEOA due in February 1990 shall add the data for FY 89, and the MEOA due in February 1991 shall add FY 90 data.)

5. SEPARATIONS

a. Assessments include only those separations that are involuntary. Numbers of those who leave the Service voluntarily are not included. This category does not apply to the selected Reservists in a voluntary force environment, except for those on continuous active duty for periods over 180 days who are involuntarily released prior to the end of their orders or contract. Such releases would be reported by the Active component.

b. On DD Form 2509 (enclosure 3), columns 5A, 6A, and 7A are used to list actual numbers of involuntary separations that are dishonorable discharges, bad conduct discharges, or otherwise under other than honorable conditions. In columns 5B, 6B, and 7B are listed the figures for total involuntary separations for the tracked group (including reductions in force (RIFs), statutory retirements, medical, etc.). Entries in columns 5C, 6C, and 7C are obtained by

dividing the figures in the A columns by those in the corresponding B columns. Entries in the C columns shall be displayed as decimal figures, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

c. Current-year data shall be reported and assessed on the face of DD Form 2509 (enclosure 3); continuation sheets may be used as needed. Data for the previous 3 years shall be provided on the reverse side of the form. (Note: the MEOA due to the ASD(FM&P) in February 1989 shall include FY 88 data plus the data from FY 87. The MEOA due in February 1990 shall add the data for FY 89, and the MEOA due in February 1991 shall add FY 90 data.)

6. AUGMENTATION AND/OR RETENTION

a. For the purposes of this reporting category, augmentation is defined as a process by which officers of the Reserve components are transferred to the regular component of a Service for purposes of serving on active duty. Augmentation reports, therefore, will be submitted only by the Active components.

b. In the reports on AUGMENTATION subjects, columns 5A, 6A, and 7A shall list actual numbers selected; while columns 5B, 6B, and 7B shall list the numbers considered (i.e., those who applied) by tracked groups. Figures in columns 5C, 6C, and 7C are obtained by dividing the figures in the A columns by those in the respective B columns. Enlisted members shall be reported in this category only when applicable.

c. The Defense Manpower Data Center began tracking retention of cohort units in FY 71 and has data available from that time to the present. Assessments in this category shall examine trends by reporting numbers in 5 year increments, starting with fiscal years 1973, 1978, and 1983, as well as the current fiscal year. Each year's report will add 1 year to each of those cited here (i.e., the MEOA due February 1, 1990 shall include fiscal years 1974, 1979, 1984, and 1989).

d. Retention of officer and enlisted members shall be monitored and reported separately, as applicable. Specialties to be monitored shall be determined by the Services as those they deem to be of interest.

e. In the reports on RETENTION subjects, columns 5A, 6A, and 7A shall list the actual numbers retained; while columns 5B, 6B, and 7B shall list the numbers by tracked groups who entered (or were recruited) with that year group. The figures in columns 5C, 6C, and 7C are obtained by dividing the figures in the A columns by those in the corresponding B columns.

f. Entries in the C columns shall be displayed in decimal form, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

7. ASSIGNMENTS

a. Assessments shall be made of those billets that are defined as career enhancing by the Service rendering the report. Separate DD Forms 2509 (enclosure 3) shall be prepared on the subjects of commanding officer and deputy or assistant commanding officer billets of specific pay grades selected by the

Services, as a minimum. Services may also wish to consider joint duty assignments as meeting the criteria in this category. Senior enlisted assignments within a pay grade should likewise be considered for assessment as a subject in the MEOA.

b. On DD Form 2509 (enclosure 3), columns 5A, 6A, and 7A shall be used to list actual numbers assigned to Service-defined career enhancing billets within a single grade. Columns 5B, 6B, and 7B shall list total population in the applicable grade by tracked groups. Entries in columns 5C, 6C, and 7C shall be obtained by dividing figures in the A columns by those in the respective B columns. Column C entries shall be displayed as decimal figures, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

c. Current-year data shall be reported and assessed on the face of DD Form 2509 (enclosure 3); continuation sheets may be used as required. Data for the previous 3 years shall be provided on the reverse side of the form. (Note: to the extent possible, the MEOA due to the ASD(FM&P) in February 1989 shall include FY 88 data plus the data from FY 87. The MEOA due in February 1990 shall add the data for FY 89, and the MEOA due in February 1991 shall add FY 90 data.)

8. DISCRIMINATION AND/OR SEXUAL HARASSMENT COMPLAINTS

a. Assessments shall be made for those complaints of discrimination that surface through official channels. Services must make those efforts necessary to ensure that complaints are captured (consolidated) from the various entry points where they are initially registered (e.g., Chaplain, Judge Advocate General (JAG), Inspector General (IG), Equal Opportunity (EO)/Social Actions, Request Mast, official hotline(s), Uniform Code of Military Justice (UCMJ) Article 138, congressional correspondence, and others, as appropriate).

b. A separate DD Form 2509 (enclosure 3) shall be prepared for the following two subjects:

(1) Discrimination - including race, ethnicity, sex (excluding sexual harassment), national origin, religion, and age (if applicable).

(2) Sexual Harassment (as defined in DoD Directive 1350.2 (reference (a)).

c. On DD Form 2509 (enclosure 3), columns 5A, 6A, and 7A shall be used to list the numbers of those complaints registered by members of each group that were confirmed (i.e., substantiated). Columns 5B, 6B, and 7B shall list the total number of complaints filed BY THE SAME TRACKED GROUPS as in the A columns. Efforts must be taken to ensure that a complaint is counted under only one subject. Entries in columns 5C, 6C, and 7C shall result from dividing the figures in the A columns by those in the corresponding B columns. Entries in the C column shall be displayed as decimal figures, rounded to the nearest hundredth place. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

d. To the extent possible, data from previous years should be reported on the reverse of DD Form 2509 (enclosure 3).

9. UTILIZATION OF SKILLS

a. Assessments in this category shall be made separately for officer and enlisted. At least five areas in which one or more minority groups (regardless of gender) or in which most women are under- or overrepresented must be included. Each area or specialty assessed for either officers or enlisted members shall constitute a subject in this category.

b. Neither DD Form 2509 (enclosure 3) nor DMDC-3035EO shall be used for this assessment category. However, assessments should include trends for the last 3 fiscal years for those skills in which minorities or women are under- or overrepresented. Due to the wide range of subjects eligible for inclusion in this category, individual MEOAs must display the relevant data in formats that are meaningful for the individual subjects.

c. Skills groupings for reporting purposes should be in accordance with DoD occupation groups (as listed in DMDC reports). These reports are available from DMDC on a quarterly basis. Services may further break their assessments down by Military Occupational Specialty (MOS), Air Force Specialty Code (AFSC) or Navy Enlisted Classification (NEC), if this is deemed appropriate.

10. DISCIPLINE

a. Assessments shall include two UCMJ subjects -- nonjudicial and judicial punishments; each requires preparation of a separate DD Form 2509 (enclosure 3). All types of courts martial resulting in conviction may be consolidated on one form. Reserve components shall render assessments in this category as appropriate.

b. On DD Form 2509 (enclosure 3), columns 5A, 6A, and 7A shall be used to list the actual numbers of those who were awarded punishment. Columns 5B, 6B, and 7B shall list the total population figures for those in the tracked groups. Entries in columns 5C, 6C, and 7C shall be obtained by dividing the A column figures by the respective B column figures. Column C entries shall be displayed in decimal form, rounded to the nearest hundredth. Blocks 5D, 6D, 7D, and 8 are reserved for OSD use.

c. Current-year data shall be reported and assessed on the face of DD Form 2509 (enclosure 3); continuation sheets may be used as needed. Data for the previous 3 years shall be provided on the reverse side of the form. (Note: the MEOA due to the ASD(FM&P) in February 1989 shall include FY 88 data plus the data from FY 87. The MEOA due in February 1990 shall add the data for FY 89, and the MEOA due in February 1991 shall add FY 90 data.)

MILITARY EQUAL OPPORTUNITY ASSESSMENT

REPORT CONTROL SYMBOL
DO-FM&PM(A)1160

Feb 29, 88, 1350.3 (Encl 3)

PART I - DATA FROM CURRENT FISCAL YEAR

1. FY 88 ASSESSMENT	2. DOD COMPONENT/SUBCOMPONENT Element rendering the report (e.g., Active Army, ANG, etc.)	3. SOURCE AGENCY			
		a. OFFICE Directorate of Human Resources (EO)	b. TELEPHONE NUMBER AV XXX-XXX/XXXX	c. DOD USE	d. DOD USE (OSD only)
4.a SUBJECT	Promotions to Grade 0-6	b. CATEGORY: Promotions			
		5. MALE	6. FEMALE	7. TOTAL	8. FOR OSD USE
TRACKED GROUPS	A	B	C	D	(A+B)
(1) American Indian/Alaskan Native					
(2) Asian American/Pacific Islander					
(3) Black (Non-Hispanic)					
(4) Hispanic					
(5) White (Non-Hispanic)					
(6) Other/Unknown					
(7) TOTAL					

9.a THE NUMBERS IN COLUMN A ARE:

Actual numbers selected for promotion during rptg period
Numbers from each group considered for promotion in period

10. STATEMENT OF SERVICE/COMPONENT AFFIRMATIVE ACTION(S)

The Service/Component submitting this report has established its own affirmative action(s) and/or initiative(s) in this category. These may be found in its Affirmative Action Plan (AAP). This block is provided so that one may read in a concise form the objective(s) or aims of the Service/Component in the category and subject shown in block 4 above. Remarks in block 10 should relate directly to the reporting element's pre-stated intent or plan of action.

11. ASSESSMENT

A narrative assessment of the Service/Component's accomplishment of its AAP objective(s) in this subject is begun in this block and continued on additional blank sheets as needed. In those instances where established objectives were not achieved, it may be valuable to examine why accomplishment was not possible. While this is principally a subjective self-analysis, it is appropriate to link comments to the statistical data display above. This becomes even more valuable as the reverse side of this form is filled in and trends begin to become available for analysis. Further, it often will be appropriate to cross-reference assessments to other categories and/or subjects, especially category 2 (Composition).

THIS FORM MAY BE TYPED/WRITTEN, FILLED IN BY HAND,
OR A COMBINATION OF BOTH METHODS.

PART II - DATA FROM PREVIOUS FISCAL YEARS

4.a SUBJECT Promotions to Grade 0-6

FY 87	ASSESSMENT	4.a SUBJECT Promotions to Grade 0-6							
		MALE			FEMALE				
TRACKED GROUPS	S.	A	B	C (A + B)	D (Loss)	A	B	C (A + B)	D (Loss)
(1) American Indian/Alaskan Native									
(2) Asian American/Pacific Islander									
(3) Black (Non-Hispanic)									
(4) Hispanic									
(5) White (Non-Hispanic)									
(6) Other / Unknown									
(/1) TOTAL									

4.b SUBJECT Promotions to Grade 0-6

FY 86	ASSESSMENT	4.b SUBJECT Promotions to Grade 0-6							
		MALE			FEMALE				
TRACKED GROUPS	S.	A	B	C (A + B)	D (Loss)	A	B	C (A + B)	D (Loss)
(1) American Indian/Alaskan Native									
(2) Asian American/Pacific Islander									
(3) Black (Non-Hispanic)									
(4) Hispanic									
(5) White (Non-Hispanic)									
(6) Other / Unknown									
(/1) TOTAL									

4.c SUBJECT Promotions to Grade 0-6

FY 85	ASSESSMENT	4.c SUBJECT Promotions to Grade 0-6							
		MALE			FEMALE				
TRACKED GROUPS	S.	A	B	C (A + B)	D (Loss)	A	B	C (A + B)	D (Loss)
(1) American Indian/Alaskan Native									
(2) Asian American/Pacific Islander									
(3) Black (Non-Hispanic)									
(4) Hispanic									
(5) White (Non-Hispanic)									
(6) Other / Unknown									
(/1) TOTAL									

Summary of Current Professional Military Education EO Training

Professional Military Education
Equal Opportunity Training -- Summary and Assessment

Army

The Army War College had four hours of equal opportunity/sexual harassment training during academic year 1993-1994, but has zero hours in the 1994-1995 curriculum.

The Command and General Staff College has a 3.2 hour block of instruction on implementation of the EO program. Topics covered include: description of the Army's EO program; identifying leadership duties and responsibilities; and identifying cultural issues relating to EO. The instruction includes a 20-25 minute practical exercise in identifying discrimination and/or sexual harassment. This seems to be more a summary of the officer advanced course program rather than presenting new material dealing with management of EO programs or problems. AAPs above unit level are not discussed. Leadership involvement and holding subordinates accountable are not reviewed

The Officer Advanced Course has a 6.3 hour block of instruction on implementing a company level EO program. It is divided into 4.7 hours of conference and 1.6 hours of practical exercises. Topics covered include: description of the Army's EO program; identifying EO leadership duties and responsibilities; identifying cultural issues related to EO; identifying situations of discrimination and sexual harassment and recommending appropriate corrective action; identifying UCMJ implications of the Army's EO program; defining enforcement of EO policies; describing implementation of the EO program; identifying leadership issues related to cultural diversity; identifying techniques for EO climate assessments; constructing an EO action plan that will correct unacceptable behavior and integrate elements of battalion and brigade AAPs into company EO programs; and identifying techniques of EO training.

The Officer Basic Course has a 5.2 hour block of instruction on performing platoon/section leader EO duties. It is divided into 3.6 hours of conference and 1.6 hours of practical exercises. Topics covered include: description of the components of the Army's EO program; identifying EO leadership duties and responsibilities; identifying leadership issues relating to cultural diversity; identifying situations of discrimination and sexual harassment and recommending appropriate action; identifying steps for the prevention of sexual harassment; identifying UCMJ implications of the EO program; identifying techniques for EO climate assessment; constructing an EO action plan that will correct unacceptable behavior for a platoon size unit; identifying techniques for EO training; and identifying behaviors that convey dignity and respect.

The U.S. Military Academy produces an annual Leader Development Resource Book which contains resource material and lesson plans for human resource training at the Academy during a given academic year. The book for the 1993-1994 academic year contains 62 lesson plans. Of that number, 2 are on prejudice, 1 is on power and discrimination, 1 is on racism, 1 is on sexual harassment, and six are on date/acquaintance rape. Each lesson plan comprises a one hour block of instruction.

The Warrant Officer Advanced Course has a 6.3 hour block of instruction on implementing a unit level equal opportunity program. It is divided into 4.7 hours of conference and 1.6 hours of practical exercises. Topics covered include: description of the Army's EO program; identifying EO leadership duties and responsibilities; identifying cultural issues related to EO; identifying situations of discrimination and sexual harassment and recommended corrective actions; identifying UCMJ implications of the EO program; defining enforcement of EO policies; describing implementation of the EO program; identifying issues related to cultural diversity; identifying techniques for EO climate assessment; constructing an EO action plan; and identifying techniques for EO training.

The Warrant Officer Candidate Course has a 5.2 hour block of instruction on performing section leader equal opportunity duties. It is divided into 3.0 hours of conference and 2.2 hours of practical exercise. Topics covered include: describing the Army's EO program; identifying EO duties and responsibilities; identifying leadership issues related to cultural diversity; identifying situations of discrimination and sexual harassment; identifying UCMJ implications of the EO program; identifying techniques for climate assessment; constructing an EO action plan; identifying techniques of EO training; and identifying behaviors that convey dignity and respect.

The Command Sergeants Major Course has a 1.5 hour block of instruction on advising the commander on the EO program. It is divided into 0.5 hours of conference and 1.0 hours of practical exercise. Topics covered include: identifying current Army EO issues and identifying EO means to advise the commander.

The Sergeants Major Course has a 4.7 hour block of instruction on advising commanders and staff on the EO program. It is divided into 3.5 hours of conference and 1.2 hours of practical exercise. Topics covered include: describing the Army's EO program; identifying EO leadership duties and responsibilities; identifying cultural issues related to EO; identifying situations of discrimination and sexual harassment and recommended appropriate corrective actions; identifying UCMJ consequences of EO violations; defining enforcement of EO policies; identifying behaviors that convey dignity and respect; describing the Sergeant Major's role in implementation of the EO program; identifying techniques for EO climate assessment; and constructing an EO action plan.

The First Sergeants' Course has a 4.9 hour block of instruction on implementing the unit level EO program. It is divided into 3.6 hours of conference and 1.3 hours of practical exercise. Topics covered include: describing the Army's EO program; identifying EO leadership duties and responsibilities; identifying cultural issues related to EO; identifying situations of discrimination and sexual harassment; identifying UCMJ implications of the EO program; defining enforcement of EO policies; describing implementation of the EO program; identifying techniques for EO climate assessment; and constructing an EO action plan.

The Drill Sergeants' Course has a 3.0 hour block of instruction on implementing an initial entry training (IET) EO program. It is divided into 1.7 hours of conference and 1.3 hours of practical exercise. Topics covered include: describing the Army's EO program; understanding EO leadership duties and responsibilities; recognizing cultural issues related to EO; identifying

situations of discrimination and sexual harassment; and identifying UCMJ implications of the EO program.

The Advanced Noncommissioned Officers Course has a 6.0 hour block of instruction on performing platoon/section sergeant EO duties. It is divided into 3.4 hours of conference and 2.6 hours of practical exercise. Topics covered include: describing the Army's EO program; understanding EO duties and responsibilities; identifying leadership issues related to cultural diversity; identifying situations of discrimination and sexual harassment; identifying techniques for the prevention of sexual harassment; identifying UCMJ implications of the EO program; identifying techniques for climate assessment; constructing an EO action plan; and identifying techniques for EO training.

Initial entry training has a 3.2 hour block of instruction on applying the soldier's EO responsibilities. It is divided into 1.0 hours of conference and 2.2 hours of practical exercise. Topics covered include: describing the Army's EO program; identifying the soldier's EO duties and responsibilities; identifying cultural issues related to EO; identifying UCMJ implications of the EO program; and identifying behaviors that convey dignity and respect.

Navy

No lesson plans on equal opportunity or sexual harassment for the Naval War College were submitted.

The Officer Accession Point Training Course does cover command managed EO and grievance procedures as well as responsibilities of leaders. No mention is made of EEO for civilians or leadership in a joint environment. Total instruction time is 2 hours.

The course for prospective commanding officers has an EO segment for two hours. Six specific CO responsibilities are covered.

The Senior Enlisted Academy discusses sexual harassment, but no other EO topic.

Recruit Company Commander training includes EO and sexual harassment. It is complaint/climate oriented.

Air Force

The Air War College does not have a block of instruction devoted to equal opportunity or the commander's role.

The Air Command and Staff College has one block of instruction on managing diversity, but none on managing equal opportunity or discrimination complaint systems. None of the four lesson objectives in the diversity class deal with a commander's responsibility to be involved in, knowledgeable about, or accountable for EO programs.

Squadron Officer School has a lesson plan called "Current Discrimination: Case Studies" but it focuses principally on the prevention of sexual harassment. Two case studies are used, but both are poorly constructed.

No lesson plans or any other form of educational material relation to EO which might be used in Officer Technical Schools or in AFROTC.

The Senior NCO Academy covers self concept, values, sexual harassment, quality force management, and homosexual policy, but nothing on managing or operating EO programs.

The NCO Academy has one lesson plan on human relations/sexual harassment, but nothing on EO programs or their operation.

The Airman Leadership School has a two hour block of instruction on equal opportunity and treatment, but nothing on the EOT system, complaint counseling or informal resolution, or sexual harassment

Marine Corps

The Marine Corps War College covers ethics (2 hours), sexual harassment (2 hours), alcohol abuse (1 hour), moral courage (1 hour), military ethics (2 hours), and homosexuals in the military (2.5 hours). Management of equal opportunity/discrimination complaint systems are not covered. Equal opportunity leadership and accountability are not discussed.

Marine Corps Command and Staff College has no lesson plans on equal opportunity, discrimination, sexual harassment, or complaints processing.

The Marine Corps Amphibious Warfare School does not have specific lessons on EO or sexual harassment, but does have a package of instruction on "leadership/ethics/decision making" which covers both sexual harassment and equal opportunity "areas of concern."

The Marine Corps Basic School has a 40 minute lecture on equal opportunity and a 40 minute lecture on sexual harassment. An additional 80 minutes is spent in discussion groups on these subjects.

Marine Corps Officer Candidate School has a one hour lecture on sexual harassment, a one hour guided discussion on sexual harassment, and a ½ hour lecture on the Commandant's equal opportunity policy.

Marine Corps NCO Academy uses EO and sexual harassment scenarios for discussion, but has no lecture lesson plans.

Marine Corps Recruit Training Regiment has 20 minutes of instruction on equal opportunity. Defines EO, summarizes the Marine Corps EO program, and familiarizes with Marine Corps EO policy.